Gandhi Memorial College Of Education Bantalab Jammu

Constituent Assembly of Jammu and Kashmir

Prof. Vidya Bhushan

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About the Book

Human memory is generally short and men and events are often forgotten unless sincere and serious efforts are made to preserve them thorough research work which posterity may not easily allow to forget. Keeping this motive in view and to keep alive the occurrences and events of the recent constitutional history of the Jammu and Kashmir, I embarked upon to write on the working of the Jammu and Kashmir's Comsembly as well as on the framing of its constitution, 1957. A sincere attempt has been made to record the Kashmir's constitutional history in chronological sequence since the establishment of the Dogra dynastic rule in J & K state in general and from the dawn of political awakening there in particular.

As this book tries to reveal the details of the most critical and controversial. Constitutional issues ; through a afresh light on the first hand account of the inner and outer maneuverings, ups and downs which the people of the state faced from time to time, as well as behind the scene developments, which had their secret hands in the off and on constitutional changes in Jammu & Kashmir – one of the most strategic and sensitive border states of the Indian Union—its study shall be quite interesting and observing.

This volume, however, covers 'Geo-political Over View of Jammu & Kashmir ' 'Constitution And Constitutionalism in J&K' ; 'Setting up of Constituent Assembly' ; Preliminary Session Of The Constituent Assembly' ; 'Appointment of Committees and Their Terms of Reference' ; Constitutional Crisis Of 1953 And Reconstitution of Committees' ; 'Reports of The Committees' ; 'Consideration of The Reports of The Committees By The Constituent Assembly' ; 'Synoptical Overview of The Main Provisions of The Draft Constitution Of J&K ; Constitutions on the Axvil; The Enforcement of Constitution Of 1957 And Dissolution of Consembly' ; 'Evaluation of The Constitution As Framed By The Constituent Assembly' ; 'Epilague' and 'Work of The Constituent Assembly At A Glance.'

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CONSTITUENT ASSEMBLY OF JAMMU AND KASHMIR

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PREFACE

It is almost universally accepted that human memory is short and men and events are soon forgotten, unless efforts are made to preserve them through works of research, which posterity may not easily allow to forget. It is with this ambition of keeping live occurrences in our recent history that I chose to embark on a course of reducing to writing one of the most modern topics of the recent times. It is, however, for my readers to judge how far I have succeeded in accomplish the task self-imposed on me and though I realize that worth of the present performance can best be evaluated by them, I can only affirm that while bringing it in present form, I have spared no pains.

The present volume contains an account of the historical factors and forces that ultimately brought the Jammu and Kashmir's Constituent Assembly into existence and it deals with its birth, manner of its working and the various stages in the formulation of the Constitution. The long process of Constitution building expresses the dormant potentiality of Kashmiri Leadership. The calm manner, in which the people of Jammu and Kashmir behaved when the Constitution was on the anvil of the Constituent Assembly, in spite of basic differences, with Dogra Nationalist of Jammu, bears eloquent testimony to Kashmir's unbounded capacity, to steer her way through trials and tribulations in times of communal frenzy of the rightist political parties and the fundamental forces in the State and outside as well as their protagonists.

Another purpose of the present study is to trace the growth of the present Constitution of the Jammu and Kashmir State by paying particular attention to and analysing the factors and historical forces which induced the growth of political institutions in the State; to analyse the factors and tendencies which led to the securing of a special status within the Indian Union and drafting and having a Constitution different from other states. The study, therefore, covers the most stormy and turbulent period of the modern political history of Kashmir.

The study also analyses the manner of the working of the Consembly, the socio-political background of the fathers of the Constitution as well as the members of its various Committees and the various stages in the framing of Jammu and Kashmir Constitution.

The historical aspect has been covered with the help of the study and interpretation of the correspondence, between Maharaja of Kashmir and the Residents and the Governor General of India; the Gazettes of Jammu and Kashmir State; Census Reports: Debates of the Consembly

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Gandhi Memorial College Of Education Documents and
of Jammu and Kashmir as well of India, the Declarations and pamphlets published by the Kashmir Government or Government of India from time to time, papers, letters, memoranda, protest notes, election manifestos and other relevant material from the archives of the different political organizations which were involved in the politics of the State, national as well as some of the foreign newspapers and the books published in India and abroad.

The behavioural side has been approached and tackled on the basis of empirical investigations. It has been based upon personal interviews covering a substantial part of the total universe. Some questions are also designed to probe and elicit replies pertaining to the issues and controversies, the answers of which are not found in the reports and debates of the Consembly and also to know their personal views about some of the constitutional problems.

In the quest of knowing about some of the intricacies of constitution making, opportunity of interviewing some of the outstanding personalities of that period in the state has also been availed of. Although they did not happen to be the members of the consembly, yet they were connected with the Constitution making process and exercised some impact thereon.

I feel heavily indebited to Dr. Sheetal Gupta, Principal Ranjit College of Education, Kunjwani, Jammu, Sh. Vishv Bandhu Sharma, Ex-Chief Librarian, Government College for Women, Gandhinagar, Jammu, Dr. Archana Gupta and Mrs. Jyotsna Gupta who have helped me in correcting the manuscript.

My thanks are also due to S.Gurpal Singh for taking pains in comr uterisation of the script.

(Prof. Vidya Bhushan)

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PRINCIPAL ABBREVIATIONS

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Art.	:	Article
C.A.	:	Constituent Assembly
C.A.Deb.	:	Constituent Assembly Debate
C.P.I.	:	Communist Party of India
Dr. Mukerjee	:	Dr. Shyama Prasad Mukerjee
G.M. Qarra	:	Ghulam Mohiudin Qarra
G.L. Dogra	:	Girdhari Lal Dogra
G.M. Bakshi	:	Ghulam Mohd. Bakshi
G.M. Sadiq	:	Ghulam Mohd. Sadiq
H.H.	:	His Highness
I.N.C.	:	India National Congress
J.S.	:	Jana Sangh
K.D. Sethi	:	Krishan Dev Sethi
Kashmir State	:	Jammu and Kashmir State
M.C.A.	:	Member of Constituent Assembly
M.A. Beg	:	Mirza Mohd. Afzal Beg
M.C.	:	Muslim Conference
N.C.(B)	:	National Conference (G.M. Bakshi)
N.C.	:	The All Jammu & Kashmir National Conference
P.P.	:	The All Jammu & Kashmir Panther's Party
P.S.C.	:	Public Service Commission
R.P. Saraf	:	Ram Piyara Saraf
Sheikh Abdullah	:	Sheikh Mohd. Abdullah
Sec	:	Section
Svt.	:	Samvat Bikermi

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Photograph of Members taken in 1956

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GEO-POLITICAL OVER VIEW OF JAMMU AND KASHMIR

The State of Jammu and Kashmir, where lies the world famous valley of Kashmir which has been surrounded by mountains, where the frisking cascades, bubbling springs, sprawling verdant fields, saffron bets remained unchanged despite invasions of the Mughals, Afghans, Pathans, Sikhs and others and which has also enthralled poets, emperors, warriors, rages and saints by its talismatic charm, is situated in the extreme north between latitude $32^0.15'$ and $37^0.5'$ north and longitude $72^0.35'$ and $80^0.20'$ east, with an area of 84,471 sq. miles(22,22,800 sq. kilometers)[1].

It is not merely a geographical expression in the north-west of the vast sub-continent of India, fanned for its beauty and natural wealth, but Kashmir State, is a land strategically situated and a connecting link for many great empires. On the eastern side, it is bounded by the table land of Chinese occupied Tibet; on the western side by the north-western frontier province of Pakistan and Afghanistan; on the southern side by the east Punjab (Indian Republic) and west Punjab (Pakistan); and on the north side by the high table lands of pamir including Chinese and Russian Turkistan known respectively as Sinking (Sinkiang) and Soviet Central Aria[2]. It borders touching, as they do, the territories of Russia, China, India, Pakistan, Tibet and Afghanistan, have an international significance. The boundary line separating it from these nations is irregular and is yet to internationally determined. The international boundary with Sinkiang in the northeast is about 400 miles long, with Tibet in the east some 450 miles long, with Pakistan in the south and southwest approximately 700 miles long, and with Afghanistan in the northwest nearly 160 miles long. On some maps it is shown as running along erstwhile USSR[3] for some 20 miles and on other it terminates at a point common to the borders of Sinkiang and the erstwhile USSR. A cursory glance on the map of Asia will show that politically Kashmir occupies very significant position because frontiers of no fewer than six countries meet with its north.

Being a play ground of Asia, Kashmir had been the victim of various foreign invasions and intrigues for centuries. The people had been mercilessly exploited by their feudal and imperialist masters.

It also occupies a strategic position from military sand point and that of foreign affairs. Planes based on the soil of Kashmir state can be used for

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bombing any area in Asia[4]. Nations interested in 'Big Power' struggle can see Kashmir primarily as the pivotal center of military strategy in this part of the world[5]. That is why it had been a constant source of irritation between Dogra rulers and the Government of India before 1947 and India and Pakistan since 1947. It has, therefore, become a pawn in the game of international politics. For instance, it has given rise to the fast developing collaboration of Pakistan and China, on one hand, and the Pak collaboration in the global plans of American policy and military strategy on the other[6].

The physiography of Jammu and Kashmir in relation to peninsula of India is, however, economically most important, in as much as the great reservoirs, from which is drawn the water that fertilizes the vast plains of the land of the five rivers, are contained herein. Here are born infant streams which feed the Indus, the Jhelum, the Chenab, the Ravi and to a great extent the Sutlej also[7].

It is, therefore, most essential to examine, evaluate and analyse the geo-political position of Kashmir state which has become one of federating units of the Indian Union after the independence. However, as the physiography of a state has a definite influence in shaping the nature of its geo-political, the existing physical barriers have often proved to be physical and cultural dividing factors. They not only become hindrances in the centrality of administration[8], create diversive regions with divergent culture, language and local interests and political aspirations, which not only result in regional imbalances but also lead to inter-regional irritations and tension, conflicts and crises. Kashmir is not an exception to this political phenomenon". Geographically the Kashmir state which presents a delightful panorama of alluvial plains to the south of Jammu, between the Ravi and the Indus, melting into hills, the hills melting into snowy mountains and mountains into high and wind swept plateau of Ladakh, with the vale of Kashmir as an emerald set in the centre, invites the wistful glances of all Asian neighbours. Obviously with such diversity of physical features, the state offers interesting variations in soil, elevation, geological formations, climate, vegetation and people. This diversity not only influenced the politics of the state, but also shaped it to a large extent[9].

So far as the geopolitical setting of the state is concerned, it may be pointed out that its geographical divisions were first classified in Drew's book "The Jammu and Kashmir Territories[10]" and were subsequently adopted for census purposes in 1911 by Md. Matin-uz-Zaman Khan[11].

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1.1 Natural Division

The natural division of the State according to this classification is :

(*i*) The sub-montane and semi mountainous tract;

(*ii*) The outer-Hills;

(*iii*) The Jhelum valley and

(*iv*) The Tibetan and semi Tibetan tract.

1.1.1. The sub-montane and Semi-mountainous Tract

Geographically, the State has been divided into four divisions. Firstly, there is sub-montane and semi-mountainous tract comprising of an area of 2606 sq. miles and runs all along the line of districts of Gurdaspur, Sialkote, Gujrat and Jhelum of the Punjab. The district of Jammu forms a part of it and besides the two large steams of Ujh and Tawi, three rivers- The Ravi, The Chenab and the Jhelum water this tract. Whereas, its lower portion bears similarity to the adjoining plains of Punjab, grows the same crop, irrigated by natural aqueducts as well as by canals[12]. Its higher portions partake of the stormy and sandy character of the hill soil and cultivation is meager and uncertain, mostly depending upon timely rainfall[13]. Its northern part up to Banihal range of mountain is hilly tract having rich forest and small beautiful valley also. In this division tropical heat is experienced.

1.1.2. The Outer Hills or Outer Himalayas

This tract mingles into the second geographical division known as outer hills or outer Himalayas, comprising of an area of 8,539 sq. miles and the whole area of low lying hill (called Sewalik or Sew-lakh) to the south of the Pir Panjal range of mountain, divides the Jammu and Kashmir provinces. The Chenab river, with its numerous feeder streams, flows through this area until it emerges into the plains at Akhnoor. A large part of this area lies at an altitude of between 2000 and 4,000 feet above the sea level[14]. Except in the fertile valleys, cultivable land is scarce and scattered. Much of the mineral wealth of the state is buried in this division[15]. The territory comprising first an second divisions constitutes the Jammu province and is also called the Chenab valley[16]. It enjoys a cooler climate.

1.1.3. The Jhelum Valley

It is backed by the third division of high mountains constituting the Kashmir valley and Pir Panchal range. In other words it consists of the valley's that drain into the Jhelum and the Kishan-Ganga rivers i.e. the Jhelum Valley, the valley of the Sindh and Liddar and the hilly tract of Muzafarabad included in this division[17] and it comprised of an area of 8,539 sq. miles. Srinagar- 'Venice of the East', Gulmarg and Pahalgam, the Dal Lake, one of the prettiest

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sheet of water"[18] and the Wular lake, "a carpet of gold under the purple mountains[19], are located in this division. It is enclosed by the Pirpanjal on the one side and the great central range separating the Indus valley on the other[20]. It has temperate summer but very cold winter.

The Jhelum valley (*i.e.* Kashmir Valley) is, however, surrounded on all sides by huge mountains. They are infinitely varied in form and colours. To the north is a chain of mountains dominated by the Nanga Parbat (7,980 meters). To the east stands Haramukh (5,150 meters). Further south is Manadeo and the lofty ranges of Gwasha Brari (5,425 meters) and the peak of Amarnath (5,280 meters). On the south-west is the Panjal range with peaks of 4,500 meters[21].

1.1.4. The Tibetan and Semi-Tibetan Tract

The fourth is the Tibetan and Semi-Tibetan tract, which is usually called the Little Tibet in the political terminology of the Dogra Rulers[22]; comprising of an area of 63,554 sq. miles[23].

Being enclosed by Karakoram on the north and the central range of the Himalayas on the south, this division is the largest but most sparsely populated division because of its high altitude and highly mountainous and barren character[24]. It forms the central portion of the valley of the great Indus river which taking its source at the Mansarowar lake in Chinese occupied Tibet, traverses the whole frontier province of this State running from southeast upto bend round Naga Parbat, where it assumes south-westernly course[25]. The mountain in the north stretch upto the Pamirs and reach great heights. One of the peaks of 28,250 feet above the sea level is the second highest peak in the world. The Himalayan ranges north and south of the Indus have been, however, described as the "sportsman's paradise" where ibex, markhor, and ovis ammon, besides other big game are met with. A number of mountaineering expeditions have been made in these regions for exploration. Except in Gilgit, the ranges in this division vary from 17000 feet to 22000 feet[26]. It has temperate summers but extremely cold winter and dry climate.

The total area of the State which is now in Indian hand's is 138,101 sq. km. It is now consist of three regions and 14 districts. The Kashmir region comprises of districts of Anantnag, Pulwama, Srinagar, Budgam, Baramulla and Kupwara. The Jammu region consists of districts of Doda, Udhampur, Kathua, Jammu, Rajouri and Poonch. There are Kargil and Leh districts in the Ladakh region.

The cultivable area in the Ladakh district is very small and rainfall deficient and agriculture is carried out by the artificial irrigation. Grim (a kind of wheat) is the chief crop and is grown even at a height of 15,000 feet.

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But the small tract of Gilgit enjoys good climate and cultivation and produces wheat crops and fruits[27]. The following table indicates the district/region wise area, population, number of villages and number of towns of Jammu and Kashmir state[28]:

Table : 1

Showing district/region wise area, population, number of villages and number of towns of Jammu and Kashmir state :

Districts (Regionwise)	Area (sq.km)	Population per sq. km	No. of inhabited	Villages unhabited	No.of towns
Jammu and Kashmir	222,236.0*	59	6,477	281	58
KASHMIR					
Anantnag	3,984.0*	165	626	19	8
Pulwama	1,398.0*	289	536	18	4
Srinagar	2,228.0*	318	168	7	3
Badgam	1,371.0*	268	475	21	1
Baramulla	4,588.0*	146	646	14	6
Kupwara	2,379.0*	138	365	4	2
LADAKH					
Kargil	14,036.0*	5	127	2	1
Ladakh	82,665.0**	2	112	1	1
JAMMU					
Doda	11,691.0*	36	652	3	6
Udhampur	4,555.0*	100	618	6	6
Kathua	2,651.0	139	555	32	6
Jammu	3,097.0	305	1,054	138	9
Rajauri	2,630.0*	115	375	6	4
Poonch	1,674.0*	134	168	10	1

* Provisional

** Includes 37,555 sq. km. under illegal occupation of China.

Sources : Table adopted from Seema Koul, Ph.D. Thesis on Regional and Religious dimensions of Jammu and Kashmir Politics since 1947, University of Delhi, Op.cit. p.25.

The physiography of Jammu and Kashmir, therefore, presents a picture of a three-storeyed house with three district physiographic divisions. The first storey is formed by the piedmont plain bordered by Shivalik hills in

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Jammu. The second storey constitutes the Middle Himalaya which borders the Kashmir valley on the south. Pir Panchal is a significant mountain of this group. Beyond the Kashmir valley are located Greater or Inner Himalaya running in many northwest to southeast, almost parallel ranges. These ranges constituted the third storey[29].

The state of Jammu and Kashmir, as may be judged from foregoing Geo-Political divisions, contains a great variety of landscape and excepting a few kandi(dry) tracts, every piece of land here has a beauty of its own. But it is of the beauty of the Valley of Kashmir that the poets have sung from times immemorial. It is here "where the world comes to an end and paradise begins". Miss Pierie rightly said "...it is a place where one might live and die contented, having seen nature in all her fairest moods, the stern grandeur of the winter snows, the smiling changeful loveliness of spring, and the exceeding beauty of the clear late autumn; while dividing the seasons, come the massed clouds and mist and pealing thunder of the rains"[30].

The physiography of Kashmir in relation to the peninsula of India is also economically most important. It is perhaps, one of the reasons that the Kashmir has already seen many masters. Barring a few solitary instances almost all had exploited this country as well as its simple, ignorant and poor peoples.

It was due to the above mentioned geopolitical characteristics which have contributed much in emergence as well as sharpening the regional identities of all the three region: Jammu, Kashmir and Ladakh- and helped in developing, in each of the region, its distinct and aggressive political identity and also its divergent political aspirations without caring for the interest of the other two regions.

The Hindu dominated belt of Jammu found its effective expression in Hindu dominated party known as Praja Parishad which first sought the security of the Dogras in the retention of Maharaja as a constitutional head of the state and then favoured full accession of the State with the Indian Union.

The Kashmir identity is, however, marked by the political movement which started in July 1931 against the Dogra monarchy. The entire course of this movement and its vicissitudes can broadly be interpreted in the terms of the urge of the Kashmiri nationalists to seek avenues of self-awareness, self-expression, self assertion and self-determination through varying manifestations and rationalisations[31]. Thus, the dominant Kashmiri sentiment, with varying phases, has been in clash with the integrationist forces inside and outside the state[32].

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So far Ladakh is concerned its discontentment is against discrimination and domination of Kashmiri leadership since independence. Their demands were firstly three fold: Divisional status to Ladakh (with Leh and Kargil as two districts) at par with Kashmir and Jammu; regional autonomy within the State; and scheduled tribes status to its people[33]. Later on they demanded the Union territory status to Ladakh in order to accelerate its socio-politico economic development[34].

As a result, no inter-regional and inter-communal political party could come up in the state which had a legitimacy from all the three regions. Though regional and political groups were activated in their respective geopolitical regions, and also some futile attempts have been made in the past by few progressive and secular elements to form political parties yet these experiment were either short lived or failed miserably.

Since geo-political position of Jammu and Kashmir state is so strategic and delicate that the above mentioned kinds of diversities in different aspects ultimately led to fragmentation and complications of its politics thereby strengthening the adversaries within the state and also across the boarder touching it.

REFERENCES

1. Bambzai, Aman Koul : Geography of Jammu and Kashmir State,Light & Life Publishers, Tilak Street Paharganj, New Delhi, 1979,pp 71-72.
2. A Note on the Jammu and Kashmir State, Jammu & Kashmir Government 1928, p.1.
3. Lakhanpal, P.L.: Essential Documents and Notes on Kashmir Disputes International Book, New Delhi, 1965, p.9.
4. The Hindustan Times, Delhi, February 18,1953.
5. The Free Press Journal, May 28,1953.
6. Bhushan Vidya : Imperial Gazeteer of India: The Indian Empire, Vol.1, Oxford 1907, p.16.
7. Imperial Gazetter of India, The Indian Expire Vol.1, Oxford 1970, p.16.
8. Madhok, Balraj : Kashmir-Centre of New Alignment.Deepak Parkashan Delhi, 1963, p.11.
9. Kaul Santosh : Evolution of the Constitutional Relationship between Jammu and Kashmir State and Indian Union:Ph.D.Thesis University of Jammu, 1972 p.25.
10. Drew, Frederic : Jammu & Kashmir Territories. Edward Stanford London 1875, pp 5-6.
11. Census of India, 1931, Vol. XXIV, Jammu and Kashmir State Part-1 Report, Jammu 1933 p.1.

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12. Bhushan, Indu : The Government And Administration in Jammu and Kashmir Dissertation, Lucknow University 1942, p.1.
13. Census of India, 1931, Vol. XXIV, Jammu and Kashmir Part-1,Report Jammu, 1933.p.2.
14. Census of India, 1941, Vol. XXII Jammu and Kashmir Part-1 and II Jammu, 1943, p.2.
15. Census of India, 1931, Op.cit. p.4
16. Dewis, Sir, James : The Punjab-North West Frontier Province and Kashmir, Cambridge University Press, Delhi 1966,p.316.
17. Census of India, 1931, op.cit. p.4.
18. Singh, Gaya Parshad : Pictorial Kashmir, Bhari Press, Patna 1914,p.19.
19. Cornor, V.C.Scott : The Charm of Kashmir, Longmans Green London 1920. p.175.
20. Census of India, 1911, p.2.
21. Kaul, Seema : Regional and Religious Dimensions of Jammu and Kashmir Politics. Since, 1947.Ph.D.Thesis University of Delhi, 1992, p.24.
22. Saraf, Veena : Jammu and Kashmir State and Central Asia-Political Relation 1857-1947 Ph.D.Thesis University of Jammu, 1992,p.4.
23. Census of India 1941, O.cit. p.3.
24. Census of India, 1931,Op.cit. p.4.
25. Lawrence, Walter R : The valley of Kashmir London 1895, p.14.
26. Saraf, Veena Kumari The Jammu and Kashmir State and Central Asia-Political Relation 1857-1947 Op.cit. p.5.
27. Ibid, p.6.
28. Table adopted from seema Koul's Ph.D. Thesis Regional and Religious Dimensions of Jammu and Kashmir Politics since 1947 Op.cit. p.25.
29. Ibid. p.24.
30. Bhushan Indu : The Government and Administration Jammu & Kashmir Op.cit. p.4.
31. Rissam, Ravinder Singh:Political Parties_Split, Merger and Alliance : A Case Study of Jammu and Kashmir Ph.D.Thesis University of Jammu, 1994. p.19.
32. Ibid, p.20.
33. Puri, Balraj : Era of Sheikh Mohd. Abdullah Economic and Political Weekly. Vol. XVIII, No. 6 & 7 Feb. 5 & 12, 1983.
34. Rissam, Ravinder Singh:Political Parties_Split, Merger and Alliance: A Case Study of Jammu and Kashmir Op.cit p.21.
35. Ibid, p.2

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2

CONSTITUTION AND CONSTITUTIONALISM IN JAMMU AND KASHMIR

The basis of any system of Government democratic or otherwise is its constitution, the roots of which lie in a belief in limited Government. A constitution, being functioning as a national symbol and embodiment of national unity and glory, a scheme for the arrangement of power-relationship inside a community, designs the institutional fabric of a state by means of which power relationship may be so organized that it would lead to an effectively restrained government action[1]. In other words a constitution delimits the authority not only of government in its totality but also each of its organ, and not only imposes restraints upon the government but these restrains are also legally enforceable[2]. Lord Bryce defines a constitution as "a frame of political society, organized through and by law, that is to say, one in which law has established permanent institution with reorganized functions and define right[3].

According to "Diecy Constitution includes (among other things) all rules which define the members of sovereign power, all rules which regulate the relation of such members of each other or which determine the mode in which the sovereign power, or the members thereof, exercise their authority"[4]. Joseph Dunner says "Constitution is a basic law defining and delimiting the principal organs of government and their jurisdiction as well as the basic rights of men and citizens"[5]. Carl J. Friedrich observes : "As a political process, the constitution can be described as analogous to the rules of a game insuring fair play"[6]. It follows that a constitution signifies the total complex of effective rules relating to the fundamental concerns of Government[7].

In the simplest words "A constitution is the fundamental law of the nation, the express embodiment of the doctrine which governs the country and from which all public authorities derive their powers"[7(a)]. It is, therefore, a mechanism under which the laws are made for the governance of the subjects[7(b)]. "A Constitution being not an end in itself but rather a means for ordering and disciplining the life of a nation is, thus, a document having a special legal sanctity"[7(c)].

Constitutionalism is, however, modern phenomenon in the true sense of the term even though scholars from Aristotle onwards have been trying to discuss and define it[8]. It is a body of normative thought which seeks to realize, by means of institutional arrangements, the dominant political values of the

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Western World[9]. It stands for the principal that the exercise of political power shall be bounded by rules which lay down the procedure and determine the validity of legislature and executive action. These rules, therefore, have the effect of curbing the arbitrariness of political power[10]. "Constitutionalism is in its formal sense, thus, means the principle that the exercise of political power, shall be bounded by rules that determine the validity of legislative and executive action, and procedure according to which it must performed, will be prescribed"[11].

Constitutionalism, thus, hinges essentially on two fold relationship between the government and the citizens on the one hand, and the relationship between one authority and another within the governmental structure on the other[12]. Constitutionalism is, therefore, based on the principle of the shared power. Constitutional government is, in short, a government by limitations, both procedural and substantive. It is a kind of political order which is sharply different from unconstitutional system such as totalitarian dictatorship or a military regime. It refers to that category of political orders which promote and safeguard certain objectives such as protection of the individual members of the political community against interference in his personal sphere of genuine autonomy; rights or freedom of religion and other rights; rule of law and division of political power both functionally and spatially[13].

In short constitutionalism entails several implications. Firstly, government enjoys only such powers as are granted to its under a constitution. Secondly, the government must owe accountability to an entity distinct from itself. Thirdly, it must have limited tenure, being elected on a wide (*i.e.* Universal) franchise. Fourthly, the citizens are endowed with fundamental rights enforceable by judiciary, and one of such rights includes to organize political party[14].

Constitutionalism in the state of Jammu and Kashmir has witnessed many chequered periods of political history. Like all other princely states, Jammu and Kashmir was also an autocratic state and Dogra rulers had inherited from the Afghans, Mughals and Sikhs a crude and primitive administration. Almost all rulers of the pre-Dogra period were despots[15]. Barring a few solitary instances almost all had exploited the state as well as its people who suffered economic backwardness and object selfdom. The machinery of government, therefore, remained unorganized, arbitrary and medieval for quite a long time till the internal and external forces compelled the rulers to initiate the process of modernization and democratization[16].

The Sikh ruler Maharaja Ranjit Singh entrusted the principality of Jammu and its adjacent areas to Gulab Singh- his Dogra General, who brought large areas including Ladakh, Zanskar, Gilgit and Baltistan under his

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control[17]. The Jammu and Kashmir state in its present territorial form which came into existence in 1846 A.D. is his monument. He was, therefore, a founder but not a reformer. He was succeeded as Maharaja by Ranbir Singh- a versatile genius more of an administrator and law giver than a conqueror[18]. He too inherited a kingdom which had already seen many masters. He was essentially a man of peace and devoted himself to administrative reforms[19]. He reorganized the government by dividing it into various departments: established regular courts of justice; got framed the uniform laws; introduced the land settlement and fixed the land tax from the cultivators; established a postal system on modern lines and ran a separate telegraph system for the State[20]; opened a number of schools; improved communication system and reduced tariff duties which led to the enhancement of trade with the Punjab to a greater extent[21].

Inspite of all these changes, the first two Maharajas carried on the administration as personal rule, though they were assisted by a number of Advisors headed by Chief Minister[22]. Maharaja Ranbir Singh was succeeded by Maharaja Partap Singh who reigned from 1885 to 1925.

The history of grant of reforms in the state, however, dated back to 1886 and occasion of reforms was mostly the visit of Viceroy or the silver jubilee of the Queen or the like. These reforms came to be granted to the people sometime in the form of constitution of the "State Council', in the shape of Municipal Reforms and some time in shape of Praja Sabha dominated by official influence[23].

Soon after the accession of Maharaja Partap Singh an attempt was made to systematize the administration and decentralize the powers. This was due to the pressure brought to bear upon the Maharaja by the paramount power that aimed at shearing the Maharaja all of real powers in the name of betterment of his subjects[24].

On November 4,1886 the Governor General of India during an interview with the then Maharaja advised him to entrust the State administration to a Council composed of his brothers-Raja Ram Singh, Amar Singh and Dewan Lachman Dass[25]. As a result Maharaja had constituted a State Council to run the administration in January 1887 for the first time[26]. It consisted of Dewan Lachman Dass as Prime Minister and President and Raja Ram Singh and Amar Singh as its members[27]. In March 1888, the then Maharaja dismissed the Prime Minister (Dewan). On March 5, 1888 Mr. Plowden, the then Resident in Kashmir sent to the Government of India a scheme for reorganization of the State administration. On April 13,1888 the then Maharaja also sent to the Governor General of India a proposal for the reorganization of the Council. The proposed council was to consist of a

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president, a vice-president and three members[28]. The Maharaja's proposal with slight modifications was accepted[29]. By establishing this council, the Maharaja had tried to lessen the interference of the Resident. The British were, therefore, not very happy about it. They wanted the Resident to be in complete charge of the State[30]. The then Maharaja was therefore, deprived of his administrative authority which was to be handed by a council of Regency under the control of British Resident for five years.

2.1. The Constitution Act of 1889

The first Constitutional Act of the state was, therefore, the Regulation providing conduct of business of the Council promulgated in 1889 as a result of which the Maharaja was shorn of all powers. He was to retain his rank and dignity as chief of the state and was to receive from the state revenues an adequate but not extravagant allowance for maintenance of his household and other necessary expenditure[31]. Subject to the general control of the British Resident, the council was made the final authority. The members of the council were appointed by the then Government of India and held independent charge of their respective Departments subject to the general control of the council which had power to veto or alter any order passed by an individual member. The annual budget of income and expenditure and all legislative measures or schemes of general state reform required the previous sanction of the council. The council held its sitting once a week, but in emergent cases special meetings were convened by the orders of the two brothers of Maharaja-Raja Ram Singh and Amar Singh- who were the members of the council. Three members constituted the quorum. Every resolution passed by a majority of votes were beings entered in detail in a minute book by the Secretary and before the close of the meeting the proceedings were read over to all the members present, and were signed by them. The Prime Minister, Raja Amar Singh who was also president of the State Council was, by virtue of his office the executive head of the administration was the channel of communication in all important state affairs between the Council and the Resident[32]. The resident was the final reference in all matters and he could veto any Resolution passed by the council or could suspend action thereon pending further explanation. The council was not to take any important step without consulting the Resident and was to act upon the Resident's advise whenever it might be offered[33].

The action taken in Jammu and Kashmir was the subject of an adjournment motion in the House of Commons. In 1891, His Excellency the Viceroy and the Marchioness of Lansdowne paid a visit to Kashmir and invited the Maharaja to take active share in the administration by investing him with powers of the President of the Council. In 1905 Lord Curzon paid a

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visit to Jammu to invest Maharaja with powers of the State council[34]. Soon after the Viceroy's announcement, the Maharaja abolished the state council.

2.2. The Constitution of 1905

The new constitution was promulgated in 1905. The Ministers were appointed to assist the Maharaja. Raja Amar Singh was appointed Chief Minister. A new post of Home Minister and another of Judge of High Court were created[35]. The Maharaja was made the final authority in all matters of administration, and business papers requiring his orders were laid before him by the Chief Minister. The four Chief Executive Officers were appointed. They were the Governor of Jammu, Governor of Kashmir, the Wazir Wazarat of Ladakh and Wazir Wazarat of Gilgit[36]. Until 1920 full powers of administration had not been restored to the Maharaja and he continued to work under the effective superintendence and control of the British Resident. Lord Chelmasford visited the State in 1920 and restored full power of administration to the Maharaja[37].

2.3. The Constitution of 1921

The Constitution of 1905 was again changed in 1921 and the State Council was again restored with the Maharaja as its senior member[38].

2.4. The Constitution of 1922

The Constitution of 1921 was again replaced by the Constitution of 1922. The formation of an Executive Council was made on modern lines. General Raja Hari Singh was appointed senior member of the Council, Rai Bahadur Janak Singh Revenue and Finance Member, A.D.Hakim Home and Law Member and Nawab Maula Bakash, Commerce and Industries Member[39]. The people of the State, however, had no say in the administration of the State.

2.5. The Constitution of 1924

The Constitution of 1922 was again replaced by the Constitution of 1924 which was amended thrice within six months. The council was to consist of 6 members. Two new portfolios were created viz. (*i*) Public Works and (ii) Finance and Police. The Council would have a Secretary and the necessary establishment. The Senior Member or in his absence, the member next in order of seniority present at the meeting would preside. The quorum of the Council was four members[40].

With the exception of the reserved subjects for the commands of the Maharaja all other matters should be dealt with by the Council and the

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proceedings would be submitted to the Maharaja by the Council Secretary for sanction. No resolution could brought into force until the sanction of the Maharaja had been obtained. If Maharaja disagreed with any resolution, he would inform the senior members of the time and place at which the council should meet and discuss the case in question in the presence of the Maharaja. If after discussion the Maharaja still disagreed, he would thereupon exercise in council his prerogative of veto and the decision in the case should be as commanded by the Maharaja. In the reserved subjects such as Military matters, political matters, treaties and agreement, Relations between Maharaja and the British Government or his feudatory chiefs, prerogatives and powers of Maharaja, rights, privileges, gifts and allowances of the ruling family, frontier affairs, residency correspondence, Toshakhanas, Police Special Report etc. different procedure for their disposal were provided under section 6 of the constitution[41].

In order to pursue the policy of decentralization, the constitution provided for the appointment of the following four committees to help the administration in matters of importance involving consideration of principle and policy.

(*a*) A Committee to examine the tenders received for the sale of "Kuth" and to report whether the agency or the contract system was to be preferred in its disposal.

(*b*) A Committee of the settlement commissioner and the conservator of forests to draws up a complete programme of forests demarcation;

(*c*) A Committee to revise the custom tarrif; and

(*d*) A Committee to determine the principles under which the state should accord permission to industrial enterprises within the state[42].

In short during the time of Maharaj Partap Singh the system of government was through executive council with constitution which varied from time to time as circumstances changed.

As stated above, the constitution of 1924 provided for the division of the subjects into reserved and non reserved. In the Reserved subjects, the Executive Council had no say. In regard to non Reserved subjects decisions were arrived at after discussion in meetings of the council at which the Maharaja was to preside. Moreover, the ruler had the power to over rule the majority of the council, if he considered such a step necessary. This system materially affected the utility of council's deliberation in virtue of the aforesaid division of subjects. It had also led to delay in the dispatch of business as a large mass of routine had to be discussed in full meetings of the council. Decentralization of powers on an extensive scale was therefore, out of question[43].

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2.6. The Constitution of Jammu and Kashmir under Regulation dated November 28, 1925

After the death of Maharaja Partap Singh, the then new Maharaja Hari Singh in council sanctioned a new constitution of Jammu and Kashmir council under Regulation No.1 dated November 28, 1925[44]. The council, under this constitution, was to consist of five members:

1. Revenue Member and Army member.
2. Finance and Police member.
3. Member of Commerce and Industries.
4. Home member and Law member and
5. Public works member.

The Maharaja was to preside over the meetings of the council and it had a Secretary and necessary establishment of its own.

2.7. The Constitution of Jammu and Kashmir of March 1927

After about 16 months, the Maharaja replaced the Constitution of 1925 by the Constitution of March, 1927. The Constitution of March 1927 had, however, distributed the various departments of Government in the following portfolios, each under the charge of a Minister:

1. Foreign and Commerce
2. Police and Public Work;
3. Revenue
4. Home and Judicial, and
5. Finance.

A Minister-in-waiting on His Highness (with out portfolio) was also appointed whose duties and functions were to put up papers received from other Ministers for Maharaja's commands. Matters relating to legislation and budget and other important matters which required collective deliberation were, under Maharaja's command, referred to a council consisted of the above six minister for advice. Maharaja used to preside over the meetings of the council[45].

Matter relating to the Army Department were put direct to Maharaja by the Colonel on the Staff after deliberation by the Military Board, which was charged with the details of Military administration under the general supervision of the Maharaja who was also the Commander-in-Chief of the State forces. The Military Board had a separate constitution with well defined duties and functions[46].

The Ministers enjoyed large powers and matters beyond their powers were submitted for Maharaja's commands. There were also rules for the conduct of Business in the State Council and Secretariat, more or less of similar rules sanctioned in British India[47].

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In 1931, the people of Kashmir rose to demand better deal for themselves. The movement led by Sheikh Mohammad Abdullah against exploitation and serfdom assumed gigantic proportions. Amidst repression, this popular leader founded the first political party-The All Jammu and Kashmir Muslim Conference. Though Muslim in name the Conference stood for rights of all communities.

On the other hand the growing tide of nationalism in the then British India also found a ready echo in Kashmir because of the strong determination of its leaders and the poverty of the masses.

2.8. The Constitution Act (Regulation) of 1991 *i.e.* 1934

In order to appease the people the Maharaja promulgated new constitution Act (Regulation) of 1991 (*i.e.* 1934)[48]. The State Council was made a part of the legislature which then consisted of the council and the Praja Sabha. No legislative measure was to be deemed to have been passed unless it had been passed by the council or Praja Sabha and had received the assent of Maharaja[49]. The legislative work was divided into two parts and one part was entrusted to the council and the other to the Praja Sabha which comprised of 75 members of whom 33 were elected. The council and the Praja Sabha, thus, were not to be two Houses of the legislature in the usual sense.

The council consisted of Prime Minister and such other ministers as Maharaja appointed. The Prime Minister was the President of the Council. He was to exercise his casting vote in a tie and was not to vote except in a tie[50].

The council was given the power to provide Regulation for any matter concerning the public debt or the public revenue by the state including the imposition of any charge thereon or maintenance, alteration or imposition of any tax or duty[51]. In case of emergency or menace to the peace and good government of the State, the council was to submit an ordinance to Maharaja. If assented to by the Maharaja, the ordinance had the force of law for a period not exceeding six months[52]. The council or Praja Sabha was not to consider or deal with matters concerning His Highness and the Royal Family; relations and agreement with the King emperor or any Government; Gilgit and Ladakh frontiers; rights of illaquadars, Jagirdars, the State department in the charge of the Minister in waiting on His Highness; the Dharmarth Dept. and repealing and modification of the provision of Regulation (No.1, 1991)[53].

The council was also empowered to make rules regarding the term of office and conditions of nomination of nominated members of Praja Sabha[54],

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qualifications of the members of the Praja Sabha and of the electors, final decision of doubts and disputes as to the validity of an election and regulating the causes of business in Praja Sabha. The council was also given the power to interpret the Constitution subject to High Highness superior power to say the final word in the matter[55].

By this constitution Maharaja sanctioned for the governance of the state a Legislative Assembly and a council of Ministers which were entrusted with the superintendence, direction and control of civil administration and government of the state on behalf of and subject to the exercise by His Highness of his inherent legislative and executive powers.

In May 1936, the Muslim Conference for the first time came out with full responsible and elected government as its goal. To achieve this goal, a United Front of all communities inhabiting the state was needed. Consequently, a special session of the Muslim Conference was held in June 1939 which passed the following historic resolution:

"From this day, the name of the Muslim Conference is changed into National Conference and all those who believe in the objective of a responsible and democratic government in the state can become its member, irrespective of any caste, creed or religion"[56].

2.9. The Jammu and Kashmir Constitutional Act (No. XIV of 1996) *i.e.* February 11,1939

In order to make feeble attempt to appease the popular demand the Maharaja issued a proclamation, sanctioning further constitutional advance, on February 11,1939[57]. The J&K Constitutional Act (No. XIV of 1996) did not make the council a part of the legislature but regarded it as the Executive. But the powers and functions of the council had, however, remained almost the same as under Regulation No.1 of 1991. The mode of the composition of the council remained unchanged[58]. The council was to act in the name of High Highness and was made supreme over the legislature[59]. The council of Ministers had the power to restore the grant refused or reduced by the Assembly on the simple pretext that the expenditure was "necessary for carrying on of any department or for the discharge of the council's responsibility for its administration"[60].

The keystone to the council arch was the Prime Minister. He was the pivot of the whole system of administration. In theory the appointment of the Prime Minister rested within the discretion of His Highness, which was not in any way influenced by public criticism, but in practice the discretion was governed by the advice and approval of the Central Government[61]. Thus the

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Maharaja and his Prime Ministers shared between themselves all powers and it was not lawful for the Praja Sabha to consider or deal with any matter or to enact any law relating to or affecting the Maharaja relations with other states, matters of frontier policy including those relating to Ladakh and Gilgit, specified matters relating to Poonch and Chenani Jagirs, rights granted to Jagirdars, State forces, Hazur department, Dharmarth department and such other matters as might be specified by His Highness from time to time[62]. The Advocate General was to advise the council on legal matters and might perform with duties of a legal nature as were referred to or assigned to him by the council[63]. The legislature was not given any right to choose the Ministers. Since the ministers were responsible to His Highness and not to the Praja Sabha, they were more concerned with gaining the favour of the Maharaja than doing any real good for the state. With powers so wide given to the council, it is difficult to see how the Praja Sabha could effectively control the administration of the state. All these provisions give the impression that the legislature was subservient to the Executive.

2.10. The Jammu and Kashmir Act (XIV of 1996) *i.e.* Constitution as amended on Sept. 7,1939

On account of the pressure of public opinion and after consultation with Sir Tej Bahadur Sapru, further changes in the legislative machinery of the state were introduced by the Maharaja on the 7th Sept. 1939 through proclamation of the Jammu and Kashmir Constitution Act. No. XIV of 1996 *i.e.* as amended on September 7,1939.

The Principal constitutional changes announced were as under:

1. Legislature was taken to consist of His Highness, The Praja Sabha and the Council was regarded as a part of executive[64]. The new provision for a majority of elected members, the proposal to do away with special status of the state councillors and to merge them in the general body of members, were made. Thus the proportion of elected members which the Government fixed upon could not be satisfactory[65].

2. The important change made was in regard to the Budget and Money bills. The demands for grants would then be submitted to the vote of the House[66], except in regard to non votable items[67]. The council ministers would, however, had the power to restore cuts where it thought necessary in the interest of administration[68].

3. The Praja Sabha was given the right of passing all the legislations pertaining to taxes as distinguished from fees and penalties[69].

Subsequently, the laws relating to the constitution of the State were incorporated in the constitution Act of 1996.

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2.11. The Constitution as Envisaged in the "Naya Kashmir" Plan (Programme) of the All Jammu and Kashmir National Conference Adopted in Sept. 29-30, 1944

The people regarded these measures as half hearted measures. They were struggling for a representative government and were not satisfied with a puppet assembly and a council of ministers responsible only to His Highness. The National Conference regarded the constitution Act of 1939 as inadequate. It held its annual session on the 29th and 30th September, 1944 at Sopore and unanimously approved a manifesto, Naya Kashmir, as the objective of the National Conference[70].

The New Kashmir-The Constitution and Outline Economic Plan for the State of Jammu and Kashmir was originally submitted to the then Government of the State as a comprehensive memorandum on the economic, political, social and cultural reconstruction of the State. Socialistic in its approach, the plan in New Kashmir has ever since 1944 provided the guiding principles of the National Conference approach to the problem of Kashmir[71].

The document was however, divided into two parts- The Constitution of the State and the National Economic Plan. In the first part, the Constitution to be given by the people to themselves envisaged equality of citizens irrespective of 'religion', race, nationality of birth' in all spheres, freedom of conscience and worship as well as of speech, of the press, of assembly and meetings, and of street processions. The right of association would be secured for all citizens and freedom would be guaranteed to trade unions, youth organisations, political parties, and other functional societies. Also guaranteed would be the right to work and to subsistence- if work was not provided-right to rest, to old age security, to education. Equal rights would be granted to men and women' equality of opportunity would be ensured to children. Cheap, quick, and impartial justice would be secured. Personal property "within the limits of the planned economy of the state" would be guaranteed. By the law of the land, asylum would be provided in the state to foreign citizens prosecuted for defending the interests of the masses, for their scientific activity or for their struggle for national liberation.

The institutional pattern was envisaged as follows :

National Assembly, the highest law giving body, for exercising the entire powers of the State; and Council of Ministers, responsible to the National assembly; Universal adult franchise; a High Court, elected by the National Assembly; Constitutional status for the Ruler. The national languages of the state, according to this, would be Kashmiri, Dogri, Balti, Dardi, Punjabi, Hindi and Urdu. Urdu would be the lingua franca of the state. A special feature of the programme was that it envisaged people's panchayats at all

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levels from the district downwards for exercising powers delegated to them and such powers would be considerable[72].

In short the Kashmir Manifesto desired that the council of Ministers of the State should be responsible to the National Assembly, that the Ministers of the State should direct the branches of the state administration which fall within the jurisdiction of the National Assembly, and that Ministers of the State should issue, within the jurisdiction of their respective departments, orders and instructions on the basis and in fulfilment of existing laws as well as of decisions and orders of the council of Minister and verify their execution.

2.12. Experiment in Dyarchy in the Constitutional Structure of the State of October, 1944

The National Conference members both inside the Praja Sabha and outside it continued their fight for freedom. They demanded a full fledged democratic state as embodied in its programme "New Kashmir". While Conference was in session the Maharaja announced his intention to invite two popular members to join his council of ministers. The National Conference permitted Mirza Mohammad Afzal Beg to accept the post of Minister. On the October 2, 1944 the Maharaja called upon the non official members of the Praja Sabha to nominate a panel of six, out of whom he would choose two for his ministers[73]. Out of the panel of six elected by the Praja Sabha, Mr. M.A.Beg and Wazir Ganga Ram, who secured the largest number of votes among the Muslim and Hindu candidates respectively were appointed Ministers by the Maharaja on October 17,1944[74].

For a year and a quarter, the experiment of dyarchy worked well both in Praja Sabha and outside. But this measure of Dyarchy soon ended in a failure and the National Conference had to withdraw its nominee because he was given no opportunity to function efficiently. Sheikh Mohammad Abdullah remarked that Mr. M.A.Beg as a popular Minister had faced unfair administration, non cooperation, indifferent of old type cabinet members and found himself fettered by intolerable bureaucratic red-tapism restrictions even in the functioning of his own departments[75], and thus the National Conference was compelled to resign owing to the fanatic conditions[76] under which he was made to work.

2.13. Introduction of Dyarchy in the New Form in the Constitutional setup of the State

At the time when the British were preparing to quit India and the colour of the political map of India was changing, the reforms granted by small doze in Kashmir, however, failed to come upto the political aspirations of the people. They wanted a total reversal of the relationship than existing between

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the Maharaja and his subjects. At this stage Sheikh Mohammad Abdullah started his "Do or Die" movement popularly known as the "Quit Kashmir Movement". In his memorandum to the Cabinet Mission he said:

"Today the National demand of the people of Kashmir is not merely the demand of a responsible government but their right to absolute freedom from the rule of the Dogra Home"[77].

While the National Conference leaders were put in jails and repression was let lose, the British quieted India on August 15,1947 and India and Pakistan emerged as two independent dominions. The princes of more than 560 princely states of the British India became free to decide whether they would accede to India or Pakistan or would remain independent. In order to get time for the final decision of the state's accession, Maharaja offered a standstill agreement to both the dominions. Pakistan Government agreed to it hurriedly where as Government of India wanted concurrence of the people of the state. Even Pakistan not only began to put undue pressure on Maharaja to accede to it but also started creating tensions by imposing economic blockade thereby cutting the supply of essential commodities to the State. Military pressure was also applied in the form of hit and run border raids along a 450 miles frontier which rendered the defence of the State ineffective to resist an all out attack on the state. Pakistan leadership then directed the tribesmen as well as its military men in civil dress to invade Kashmir. These invaders indulged in indiscriminate plunder, massacres, burning of houses, raping and abducting women. This compelled the Maharaja of Jammu and Kashmir to approach the Indian Government for immediate military assistance first than entered state accession with Indian dominion in October, 1947.

On the 26th October, 1947 the Maharaja was obliged to seek the help of India after executing an Instrument of Accession similar to that executed by the Rulers of other Indian Princely States. By the Accession the dominion of India acquired jurisdiction over the State with respect to the subjects of Defence, External affairs and Communication.

The transfer of power was, however, not a smooth process. The Maharaja did not agree to appoint Sheikh Abdullah as Prime Minister, because he did not trust him[78]. As a result dyarchy in another form was introduced. The Maharaja appointed Sheikh Abdullah as the head of the Emergency administration on October 27, 1947 and Mehar Chand Mahajan Continued as Prime Minister. In this system the organisation and control of the administration to meet Emergency were under a separate head of Emergency Administration and ordinary civil administration continued with the Prime Minister.

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This arrangement, however, could not work longer. Soon Sheikh Abdullah was accused of using powers in a dictatorial manner regardless of all rules and forms of law[79]. Sheikh Abdullah on the other hand accused Prime Minister of "being a party to the shooting of muslims"[80].

2.14. Establishment of a Fully Democratic Constitution in the State on March 5,1948

Meanwhile the wheels of history were in full swing. The Government of India and the people of Kashmir forced the Maharaja to part with powers and to set up a democratic Government in the State[81]. Consequently, on 5th of March, 1948 a little more than five months after signing of instrument of accession, the Maharaja issued a proclamation accepting legitimate desire of the people for the immediate establishment of a fully democratic constitution based on adult franchise with a hereditary ruler from the ruling dynasty as the constitution head of the executive responsible to the legislature[82].

2.15. Application of Article 1 and Article 370 of the Constitution of India on Jammu and Kashmir

In a letter to Sheikh Abdullah dated May 18,1949 Pt. Nehru however, stated:

"It has been the settled policy of the Government of India which on many occasions has been stated both by Sardar Patel and by me that the Constitution of Jammu and Kashmir State is a matter for determination by the people of the State represented in a constituent Assembly convened for the purpose"[83].

While the Indian Constituent Assembly was passing through its final stages of the framing of the Constitution, four representatives from Jammu and Kashmir were nominated to it in June 1949. But when the Consembly of India was about to finalize its labour, it was felt that some provision in regard to Kashmir should find place in the Constitution. As a result the draft Article 306-A was then negotiated between the then Central and State leadership.

Meanwhile the Constitution of India, comprising Article 395 and 9 schedules as completed by the Consembly on November 26,1949 came into force on January 26,1950. Like other Indian states which survived as a political units at the time of the making of the Constitution of India, the State of Jammu and Kashmir was also included as a part B States in the First Schedule of the Constitution. But all the provisions of the constitution of India applicable to part B states were not extended to Jammu and Kashmir[84]. The constitution of India, thus, provided that the only articles 1 and 370 would apply of their own force to Jammu and Kashmir[85]. Article 370 of the Constitution of India, however, granted a special status to the state keeping in view the special and peculiar problems faced by it[86].

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The Government of India then declared that it was the people of the State of Jammu and Kashmir, acting through their constituent Assembly, who were to finally determine the constitution of the state and the jurisdiction of the union of India over it, and the provisions of the constitution regarding this state were, accordingly, to be in the nature of an interim arrangement[87].

2.16. The Constitution (Application to Jammu and Kashmir) Order 1950

Since the State of Jammu and Kashmir became an integral part of India after the execution of Instrument of Accession as well as the enforcement of the Constitution of India, it was necessitated to bring about the modification in the then existing constitutional structure of the State.

Under Article 370(1) (*ii*) the President of India in consultation with the Government of Jammu and Kashmir, issued "The Constitution (Application to Jammu and Kashmir) order, 1950 specifying the matters on which the Union Parliament would be competent to made laws for the state[88]. This order was to govern the constitutional relationship of Kashmir with India after the Indian Constitution came into force on January 26,1950.

Thus, the powers of the Union Parliament with regard to the state of Jammu and Kashmir were extended beyond what was originally surrendered under the Instrument of Accession of October, 1947[89].

2.17. The Jammu and Kashmir (Amendment) Act 1996 (*i.e.* the Jammu and Kashmir constitution Act 1996 as Amended by act X of 2000, XIV of 2001, XII of 2002, XII of 2003 and XVI of 2008

The freedom struggle, however, passed through various stages till March 1948 when the first time in the history of Kashmir the people's government was established and finally it had its culminating point in the convocation of the Constituent Assembly in October, 1951 giving the people their sovereign right of self-determination for which they had crusaded for over two decades.

The Constituent Assembly elected in October 1951 and met in Srinagar in October-November 1951 had formed various committees to submit reports on the questions facing it. In the meantime Yuvraj Karan Singh had sanctioned the Jammu and Kashmir constitution (Amendement) Act 1996 (*i.e.* The Jammu and Kashmir Constitution Act. 1996 as amended by Acts X of 2000, XIV of 2001, XII of 2002, XII of 2003 and XVI of 2008)[90]. With a view to bring it in accord with the spirit of proclamations dated March 5, 1948, June 20, 1949 and April 20, 1951 and the changes brought about in the actual governance of the State.

The new Act wiped out section 5 of the Jammu and Kashmir Constitution Act November XIV of 1996 which preserved intact the theory of the divine

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right of kings, and Yuvaraj then became the Constitutional head of the State. The sovereignty in all matters except in regard to three subjects namely Defence, External Affairs and Communication (in respect of which the dominion of India got powers to make laws by the Instrument of Accession dated October 27, 1947), would reside in the state and all rights, authority and jurisdiction which were concomitants in this sovereignty would be exercisable by the ruler on the advice of the government which henceforth should be responsible to the State Legislative Assembly. The powers of the Legislative Assembly would be exercised by the Constituent Assembly, the government would be responsible to that Assembly and all the crippling restrictions placed on the Legislature powers of the Assembly in the Jammu and Kashmir Constitution Act. No. XIV of 1996 had been done away with. The Legislature of the State in future would be absolutely sovereign within its domain and there would be no matters reserved from it. The Legislative Assembly would have full power to make laws for the whole or any part of the State and for the State subjects wherever they might be, except in regard to Defence, External Affairs and Communications[91].

2.18. The Jammu and Kashmir Constitution (Amendment) Act 1951

The amending Act *i.e.* The Jammu and Kashmir Constitution (Amendment) act. 2008 (XVII of 2008) which was named "The Jammu and Kashmir Constitution (Amendment) Act, 1951 placed on the statute books and brought into force in Jammu and Kashmir state from November 20, 1951[92]. Therefore, provided an interim constitution for the state which would remain in force till a new constitution was framed by the Constituent Assembly of Jammu and Kashmir.

2.19. The Constitution of 15th November, 1952

Towards the later part of 1951, under the pressure from the Abdullah's Cabinet, Maharaja Hari Singh was obliged to abdicate in favour of his son Yuvaraj Karan Singh. He lateron elected by the Consembly of the State (which came in existence in October, 1951) as the 'Sadar-i-Riyasat' . Thus, the princely rule in the state came to an end and the head of the state was henceforth to be an elected person.

The Government of India, therefore, accepted this position by making a Declaration of the President under Article 370(3) of the Constitution(15th November, 1952) to the effect that for the purpose of the constitution, 'Government of the State of Jammu and Kashmir[93]:

"Means the person for the time being recognised by the President on the recommendation of the Legislative Assembly of the State as the Sadar-i

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Riyasat of Jammu and Kashmir, acting on the advice of the council of Ministers of the state for the time being in office"[94].

2.20. The Constitution (Application to Jammu and Kashmir) Order 1954

Meanwhile political events were moving fast in the State. There was open conflict between the Dogra Integrationists and the Kashmir Autonomists on one hand and Congress leadership in India and the leadership of National Conference in the State, due to the then emerging divergence in their outlook, on the other. Subsequently the Consembly of State made certain provocative decisions such as abolition of hereditary monarchy and the elected head of the state, adoption of new state's flag as well as its emblem which cause deep resettlement in Jammu province as well as in northern India.

As a result, there were discussions and negotiations between the central and state leadership at New Delhi which resulted in an agreement (Delhi Agreement) of July, 1952[95].

This Agreement incorporated the subjects over which the Union should have jurisdiction over the State, to the decisions of the Constituent Assembly. It was also agreed that the Sadar-i-Riyasat would have the position of Governor or Rajpramukh of a State under the constitution of India vis-a-vis Government of India.

Then came, on the August 8,1953, the dismissal of Sheikh Abdullah's ministry on the ground of inefficiency and loss of confidence of the people[96]. Bakshi Ghulam Mohammad was asked to form a new ministry[97].

The Consembly of Jammu and Kashmir had, however, ratified the accession of the State with India and also the decisions arrived at the Delhi Agreement as regards the future relationship of the State with India, in early 1954.

In pursuance of this, the President in consultation of the State government made. The Constitution (Application to Jammu and Kashmir) Order, 1954. This order implemented the Delhi Agreement of July 1952 as ratified by the Constituent Assembly and also superseded the Constitution (Application to Jammu and Kashmir) order of 1950[98].

2.21. The Jammu and Kashmir Constitution (Amendment 2011) *i.e.* 1954

The Jammu and Kashmir Constitution Act, (XIV of 1996) *i.e.* 1939 was once again subjected to amendment in 1954 by The Jammu and Kashmir Constitution (Amendment) Act, 2011. The amendment Act came into force from 14th May, 1954, the same date as the Constitution (Application to Jammu and Kashmir) Order, 1954, was issued by the President of India[99]. The main changes introduced by this Amendment Act were:

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(*a*) new provisions with regard to the permanent residents were introduced and the term 'State Subject' was omitted ;

(*b*) clause 2 of section 56 of the Constitution Act was modified; the original jurisdiction of the High Court in respect of Civil suits and proceedings was extended to enable it to entertain civil suits of a value of Rupees Twenty thousand instead of Ten thousand originally ;

(*c*) His Highness's Board of Judicial Advisers was abolished, all appeals and proceedings pending before the Board were transferred to the Supreme Court of India ;

(*d*) Section 75 of the Constitution Act, 1939 which made the council of Ministers the final interpreter of the Constitution, was deleted from the Constitution ;

(*e*) With a view to giving advisory jurisdiction to the High Court, a new section 66-A was inserted.

"If at any time it appears to the Council that a question of law or fact has arisen or is likely to arise, which is of such a nature and of such public importance that it is expedient to obtain the opinion of the High Court upon it, it may refer the question to that Court for consideration and the court may, after such hearing as it thinks fit, report to the Council its opinion thereon[100]."

The words "and the court may", presumably give an option to the High Court to refuse to exercise this jurisdiction. However, such a situation has not yet arisen.

The Amendment Acts referred to above were passed to cope with the changed conditions in the State of Jammu and Kashmir. These were also intended to achieve the objective enunciated in the 'New Kashmir' Plan which called for a responsible ministry.

The Constitution Act, 1939 with these various amendments served as the 'Interim Constitution' of the Jammu and Kashmir State, pending the enactment of a fully democratic Constitution by the State Constituent Assembly[101].

2.22. The Jammu and Kashmir Constitutional Amendment of April 6,1955

The Constituent Assembly of Jammu and Kashmir which met on April 6,1955 accorded its concurrent to the application of the further provisions of the Constitution of India to the State. These were :

(*a*) "Entry 53 of the seventh schedule-Union List (hereinafter referred to as the Union List) in so far as it relates to the regulation and development of oil fields and mineral oil resources;

(*b*) Entry 54 of the Union List-Regulation of mines and mineral

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development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest;

(*c*) Entry 67 of the Union List-Ancient and historical monuments and archaeological sites and remains declared by Parliament by law to be of national importance"[102].

This Assembly further authorized the Government of Jammu and Kashmir to communicate a copy of this resolution to the Government of India for appropriate action.

REFERENCES

1. Ray, Amol, Political Theory, The World Bhattacharya Mohit Press Pvt. Ltd 37/A College Street Calcutta 1983, p.303.
2. Maheshwari, S.R Comparative Government And Politics, Lakshmi Narain Agarwal Educational Publisher Hospital Road Agra, 1985, p.62.
3. Ray, Amal, : Political Theory. Op.cit.p.303 Bhattacharya
4. Ibid.
5. Dunner, Joseph : Dictionary of Political Science, Vision Press Limited, Saxena House 74A Regent Street London W! 1964, pp 118-119.
6. Ray, Amal;Bhattacharya : Political Theory, Op.cit p.303
7. Ibid. Op.cit. p.303.
7. (*a*) Sethi, R.P: Commentary on the Constitution of Jammu and Kashmmir, Ashoka Law House, New Delhi, 2005 p(i).
7. (*b*). Ibid.
7. (*c*) Ibid
8. Maheshwari, S.R : Comparative Government And Politics Op.cit. p.62.
9. Ray, S.N : Modern Comparative Politics, Prentice-Hall of India Pvt. Ltd. New Delhi 1999, p.109.
10. Ibid.
11. Ibid p.111.
12. Ibid p.109
13. Friedrich, Earl J. : Constitutions and constitutionalism International Encyclopedia of Social Sciences Vol. 3pp. 319-320.
14. Masheshwari, S.R : Comparative Government and Politics, Op.cit. p.64.
15. Bhushan Indu : The Government And Administration In Jammu and Kashmir Dissertation Lucknow University 1942, p.12.
16. Bhushan Vidya : State Politics And Government:Jammu and Kashmir, Jay Kay Book House Residency Road, Jammu, 1985, p.21.
17. Kotru, M.L : The Kashmir story, External Publicity Division Ministry of External Affairs, Govt. of India year not mentioned, p.3.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2025-Grant

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18. A Note on Jammu and Kashmir State Op.cit. p.5.
19. Bhushan, Indu : The Government and Administration Jammu and Kashmir, Op.cit. p. 15.
20. A Note on Jammu and Kashmir State. Jammu and Kashmir Government Publication, 1928, p.4
21. Bhushan, Indu : The Government and Administration Jammu and Kashmir, Op.cit. p.15.
22. Panikar, K.M; Gulab Singh, Martin Hopkinson, Soho Square London 1930, p.1.
23. The Tribune, March 30,1952, Shri B.P.Sharma'a Article Kashmir Rises from Slavery to Sovereignty.
24. Ibid.
25. Foreign Department, Secretariat S.No. 73 proceeding December 1886, National Archives of India, Delhi.
26. Resident to Foreign Secretary, 28th January, 1887, Foreign Secretariat No. E-46-48 Proceeding March 1887, National Archives of India, Delhi.
27. Ibid.
28. Digby Sir William : Condomed Unheard, Indian Political Agency 25 Craven Street, Charing Class, London 1890 pp 140-50.
29. Foreign Secretary to Resident 25th July, 1888.
30. Bhushan, Vidya : State Politics and Government of Jammu and Kashmir. Op. cit. P.24
31. The Tribune, March 30,1952 Shri B.P.Sharma'a Article Kashmir Rises from Slavery to Sovereignty.
32. Report on the Administration of the Jammu and Kashmir For 1889-90. J&K State, Jammu 1891, p.4.
33. Ibid
34. The Tribune, March 30, 1952, Op.cit.
35. The Annual Adminsitration Report, J&K State for Samvat 1977-79(1920-23) Jammu 1924 p.1.
36. Ibid.
37. The Tribune, March 30, 1952, Op.cit.
38. Wazir Ganga Ram Report on the Administer J&K 1943, pp 15-16.
39. The Annual Administration Report, J&K State for Samvat 1977-79(1920-23) Jammu 1924 p.1.
40. Jammu and Kashmir State Constitution of J&K State Council and Rules of Business, J&K Govt. Srinagar, 1924. p.1.
41. Ibid pp 1-4.
42. Ibid.
43. A Note on the Jammu and Kashmir State Op.cit. pp 7-8.
44. For detailed provisions so far the constitution of J&K State council and rules of Business sanctioned by Maharaja under Regulation No.1, 25th November, 1925.

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45. A Note on Jammu and Kashmir state, Op.cit. p.7-8.
46. Ibid, p.8.
47. Ibid.
48. The Regulations consisted of 46 sections and two schedules, began with the statement of policy which came into force on 7th Baisakh, 1991.
49. Regulation of (1991) section 10.
50. Ibid. sec. 22.
51. Ibid sec.11.
52. Ibid, sec.12..
53. Ibid. sec.7.
54. Ibid, sec. 15 and 16.
55. Ibid sec 44 and 3
56. The Tribune March 30, 1952, Op.cit.
57. Govt. of Jammu and Kashmir: A Handbook of Jammu and Kashmir state, 1947, 3rd Edition, p.35.
58. The J&K Constitution Act No. XIV of 1996 (1939)A.D.Sec. 7
59. Ibid, sec.34.
60. Ibid, sec. 45 Proviso (a)
61. The Tribune, March 30,1952, Shri B.P.Sharma"s article "Kashmir Rises From Slavery to Sovereignty".
62. The Jammu and Kashmir Constitution Act No. XIV of 1996, Sec. 24.
63. Ibid, Sec. 10.
64. The Jammu and Kashmir Constitution Act. No. XIV of 1996 section 13.
65. Kashmir Reforms: An Article in the Hindu Madras dt. 13.2.1939.
66. The Jammu and Kashmir Constitution Act No. XIV of 1996 sec.45
67. The Hindu Madras, Feb. 13,1939.
68. The Jammu and Kashmir Constitution Act-XIV, 1996 section 24.
69. The Hindu Madras dated 13.2.1969
70. New Kashmir, Op.cit. p.24.
71. Gupta, Sisir : Kashmir, Asian Publication House, New Delhi, 1967 p.55.
72. Ibid, p.pp 55-56.
73. Jammu and Kashmir Information- a Pamphlet issued by the Bureau of Information. H.H.Govt. of J&K , April-August 1946, p.4.
74. Ibid,
75. Khidmat, N.C.News paper from Srinagar dated 3.4.1946.
76. National Conference's Memorandum to Cabinet Mission People's Age Bombay June 2,1946.
77. Ibid.
78. Mahajan, Mehr Chand: Looking Back. Asian Publishing House, New Delhi, 1963, p.164.
79. Dass, Durga : Sardar's Patel correspondence 1945-50, Vol. 1, Navjeevan Publishing House, Ahmedabad, 1971, p.90.

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Gandhi Memorial College Of Education Bantalab Jammu

80. Singh, Lt. Col. Bhagwan : Political Conspiracies of Kashmir. Light and Life Publishers, New Delhi, 1973, p.61.
81. Ganju, Dr. M : This is Kashmir. S.Chand and Co. Delhi ,1948,p.31.
82. Proclamation of Shriman Inder Mohinder Raj Rajeshwar Maharaja Shri Hari Singh, Ruler of J&K and Dependencies Jammu, March 5,1948.
83. India and Kashmir Constitutional Aspect- A Booklet issued by Ministry of Information and Broadcasting, J&K Government, year not mentioned p.3.
84. Basu, Durga Dass : Union Jurisdiction over Jammu and Kashmir. S.C. Sarkar and Sons Ltd, Calcutta-12, year not mentioned p.1.
85. Ibid.
86. Ibid.
87. Ibid.
88. Ibid. p.2.
89. Anand, Adarsh Sein : The Development of the Constitution of Jammu and Kashmir, Light and Life Publishers New Delhi, 1980, pp.134.
90. The Jammu and Kashmir Constitution (Amendment)Act 1996as amended by Act X, 2000,XIV of 2001, XII of 2002, XII of 2003 and XVI of 2008.
91. The Statesman, Delhi dated November 2,1951.
92. Ibid.
93. Basu, Durga Dass : Union Jurisdiction over Jammu and Kashmir, Op.cit p.2.
94. Ibid.
95. Birdwood, Lord : Two Nations and Kashmir, Robet Hall Ltd. 63 Old Brompton Road, London S. W.7, 1956,p. 223.
96. Basu, Durga Dass: Union Jurisdiction Over Jammu and Kashmir, Op.Cit. p.2.
97. Teng, Krishan Mohan : Kashmir's Special Status, Oriental Publisher Delhi, 1975, p.71.
98. Basu, Durga Dass : Union Jurisdiction Over Jammu and Kashmir.Op.Cit p.2.
99. Anand, Adarsh Sein : Development of Constiution of Jammu and Kashmir, Op.Cit. p.163.
100. Ibid.
101. Ibid, p.164.
102. Constituent Assembly Debate Vol. ____ dated April 6,1955 p.1.

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SETTING UP OF THE CONSTITUENT ASSEMBLY

According to Walter F.Dood Constituent Assembly is "a representative body chosen for the purpose of considering and either adopting or proposing a new constitution or changes in the existing constitution"[1]. Whereas Abbe Sieyes defined it as "an assembly of extraordinary representatives to which the nation shall have entrusted the authority to make a constitution or at any point to define its contents"[2].

Sir, Ivor Jenning's has mentioned the following situations in which Constituent Assembly comes into being :

(*i*) Where there is a great social revolution; or

(*ii*) Where the nation throws off the yoke of a foreign conqueror; or

(*iii*) Wherein some way a state separates from its roots; or

(*iv*) Where when a nation is created by the fusion of smaller political units[3].

According to Ghulam Mohi-ud-Hamdani following factors were responsible for the setting up of the Consembly in J&K State:

1. A mighty national freedom movement in Kashmir, with its own heritage and its own vision of the future[4], ranging over two decades.

2. A desire of the people to break the old shell of an archaic and medieval economic and political set up and to have a constitution worthy of the tradition of their freedom struggle and in accordance with the principle of New Kashmir[5] ;

3. Pak aggression in 1947, the indecision and unrealistic procedure adopted by the U.N.O. which condemned the people of the State to a life of agonizing, uncertainty and its ultimate failure to redress the wrongs of the aggressions[6] ;

4. The commitment of the Government of India to give an opportunity to the people of the State to decide for themselves the nature of their own constitution, thus granting special status to kashmir under article 370 of the Indian Constitution[7] ;

5. The stand of the all J&K National Conference that in the determination of the future of the State the only and the supreme factor would be the sovereign will of the people expressed freely and democratically[8] ; and

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6. To put an end to the perpetuation of the conditions of doubt and frustration along with indeterminats state of drift and indecision[9].

3.1. Emergence of the Idea and Reactions it evoked

The idea of having a Constituent Assembly to draft a Constitution for the State was first conceived by some of the leading members of the Muslim Community of Kashmir, the prominent member of which was Khawaja Said-Din-Shawl as back as in 1924[10]. It was first referred in a Memorandum drafted by Mr. Agha Haider and submitted to Lord Reading the then Viceroy of India who visited Kashmir on October 14,1924[11] and remained there till October 28,1924. Item No. 12 of the demands contained in the Memorandum was:

"An elected Legislative Assembly which should also work as a Constituent Assembly for the drafting Constitution for the State, be set up immediately"[12].

This idea of having a Constitution making body for the State of Jammu and Kashmir, once again, mooted by the All Jammu and Kashmir National Conference at the historic Sopore Session of 1944 where the party laid down a socio-politico-economic plan for the rebuilding of the state which has come to be known as "New Kashmir Manifesto"[13] of the people to build a new Kashmir of their own choice. New Kashmir Manifesto envisaged a constitutional Government and for that the party demanded a Constituent Assembly to formulate the constitution of the State[14]. While submitted the manifesto to the Maharaja of Kashmir for consideration, the leaders made it clear that it was the only plan acceptable to the people of the State[15].

On the national scene in May 1946, however, with the failure of the Indian National Congress and the All India Muslim league to reach an agreement upon the fundamental issue of unity or division, the British Government presented what is known as the Cabinet Mission[16] plan. According to the plan the paramountcy was to lapse and the Princes of states would become free to decide about joining any of the two Dominions- India and Pakistan- or to remain independent[17]. The plan was ultimately accepted by both the leaders of Congress and League[18].

On August 15,1947, India and Pakistan emerged as two Independent Dominions. Like some of other princes, the Maharaja of Kashmir being carried away by sentimentalism rather than realism and supported by his advisers and even some of the leaders of the politically conscious groups in the State, also fondled with the idea of independence. In the course of a letter dated

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October 26, 1947 to Lord Mountbatten, the Governor General of India, the Maharaja said :

"I wanted to take time to decide to which Dominion I should accede and whether it is not in the best interests of both the Dominions and my state to stand independent, of course, with friendly and cordial relations with both"[19].

An independent Kashmir like Switzerland was within their imagination[20]. R.C.Kak, the then Prime Minister of the State, also wanted to keep India at arms length and thereby maintain the separate entity of Jammu and Kashmir as an independent State in this sub-continent[21].

Thus, having failed to decide, the Maharaja offered standstill agreements to both the Dominions on August 15,1947. Pakistan agreed to it hurriedly whereas Government of India wanted concurrence of the people of the State[22]. Pt. Nehru was of the opinion to establish the popular authority in the State first and then set up the Constituent Assembly to decide its future[23]. Thus the idea of convening a Constituent Assembly for Jammu and Kashmir which was conceived before the partition of India was contemplated and would have been implemented but for the invasion of the State, after the partition of India, by the tribesmen from Pakistan territory. While accepting the request of the Maharaja for accession of State with India and despatching military help Pt. Nehru, once again, stressed the need for setting up Constituent Assembly in Jammu and Kashmir. Sheikh Mohd. Abdullah moved a resolution during the National Conference Convention held in 1948:

"....The Convention feels very strongly the urgency of convening a Constituent Assembly on the basis of adult franchise for framing a Democratic Constitution for the State and for giving a concrete shape to the aspirations of the people...."[24]

The General Council of the All J&K National Conference, as early as 1948 urged the State Government to convene a Constituent Assembly intended to shape the future destiny of the country and to implement the cherished objectives of New Kashmir. After accepting the desire of the people of the State for setting up of Democratic Constitution His Highness the then Maharaja of Jammu and Kashmir, issued a proclamation on March 5,1948 (*i.e.* about five months after accession) which mentioned the replacement of Emergency Government by popular Interim Government headed by Sheikh Mohd. Abdullah. The proclamation further laid down to convene a National Assembly (the Constituent Assembly) based upon adult suffrage and proportionately representing all the sections of the population and the areas of the State as soon as the normal conditions in the State were restored[25]. On

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the same day, a popular Interim Government[26] was formed. It pledged to set up an Assembly on the basis of general adult suffrage which would draw up the constitution for the people of Kashmir[27].

The need of convening the Constituent Assembly to draft a separate constitution for the people of Jammu and Kashmir State had been the settled policy of Government of India and the same stand was stressed by Pt. Nehru in his letter of May 18, 1949 addressed to Prime Minister of Jammu and Kashmir state[28].

Addressing Muslim audience at Hazratbal Mosque on June 24,1949 Sheikh Mohammad Abdullah the then premier of the Jammu and Kashmir state reiterated that the Kashmir Constituent Assembly, which would be convened shortly, would have full and complete power to decide on any matter affecting the future of the State[29].

The right of Kashmir State to draft its own Constitution was fully recognised even by Sardar Patel[30]. Shri N. Gopalaswami Ayyangar while moving Article 306A (which later became Article 370 of Indian Constitution) and mentioning the reasons for giving a special treatment to Kashmir State, in reply to the question of Maulana Hasrat Mohani in Indian Constituent Assemnly on October 17, 1949, pointed out that the will of the people of Kashmir through the instrument of Constituent Assembly would determine the Constitution of the State and Union Jurisdiction over it[31]. In an interview with the correspondent of the American Magazine "Look" in September 1950, Sheikh Mohd. Abdullah, the main architect of the Constituent Assembly said:

"In case the Security Council finds itself incapable of arriving at a decision in the near future, it is upto the people of the State to find ways and means of asserting their will so as to put an end to the agony and uncertainty of the present situation. They will in that case convene a Constituent Assembly which would determine their stand...[32].

The All Jammu and Kashmir National Conference met in a Session on October 27,1950 at Srinagar[33] and examined the report submitted to Security Council by Sir Owen Dixon (a judge of the High Court of Australia) who was nominated as a mediator by it on Kashmir issue. The General Council of National Conference was of the opinion that the report was against the very objective on which the people of Jammu and Kashmir State reposed their faith and observed that the U.N.O. had failed to find a solution of Kashmir issue. Speaking on the behaviour of U.N.O. N.C.Chatterjee, M.P.pointed out :

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"the way the U.N.O. is behaving reminds us of the exploits of the Holy Alliance. It seems that the race of Bismarch, Castlereagh and Diraeli has not yet gone. Only they have changed colour and, possibly their names"[34].

Thus, in order to end the State of uncertainty, wait and see, frustration and agony and fully recognising their right of self-determination, the General Council issued a mandate to the Supreme National Executive for the convocation of Constituent Assembly based upon adult suffrage and embracing all sections of the people and all the constituents of the States for the purpose of determining the future shape and affiliation of the State of Jammu and kashmir[35].

There was a mixed reaction to this resolution of the Council. The reaction of various leaders, Press and Countries was as:

(*a*) The Jammu and Kashmir National Conference, The National Congress[36], Mr. J.P.Narayan[37] and the State Press,The Daily Khidmat(an official organ of National Conference) and 'The Sach of Jammu (A pro-National Conference Weekly) welcomed the resolution[38].

(*b*) Whereas the All Jammu and Kashmir Praja Parishad[39]; Jammu and Kashmir Sahayak Sabha[40]; Pakistan Press, leaders and Government[41]; the so-called Azad Kashmir Government and leaders[42]; and Western countries criticised and condemned such a move.

Those who welcomed the resolution realised the failure of the U.N.O. to find out a solution of Kashmir problem. They were also conscious that the people of Kashmir could not stop all their activities and adopt an unhelpful attitude of wait and see. In order to put an end to the agonising, uncertainty, suspense, doubts, frustration and to exercise their right of self-determination, they welcomed the council's resolution for the convening of the Constituent Assembly[43].

The All Jammu and Kashmir Praja Parishad and the All Jammu and Kashmir Sahayak Sabha opposed the setting up of a separate Constituent Assembly for Kashmir to decide its future when all the political parties of the State had already given a unanimous verdict for accession to India. They favoured the full integration of the State with India and the application of Indian Constitution to kashmir in its entirety. They regarded it as another move for an "Independent Kashmir"[44].

Pakistan Press, leaders and Government criticised and condemned the resolution, because they regarded it as Nehru-Abdullah plot to deprive the

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people of Kashmir of their right of self-determination[45]. The so-called Azad kashmir leaders questioned the validity of the convening of Constituent Assembly, when 'half of the State area,' being out of India's control, and thus not having any representative in the Constituent Assembly. They thus, regarded such a move as an endorsement of the forcible, illegal and immoral occupation of Kashmir by India by means of deliberate fraud[46].

The Anglo-American Block especially, knowing Kashmir as prominent in the Strategic and military plans of imperialism, sought to capture it for using it as a base against the Soviet Union and China and against the people of Pakistan and India[47], and therefore, severely criticized the convening of the Constituent Assembly. They were of the view that such a move would prejudice the issue before the Security Council[48] and would further complicate the unsettled problem of Kashmir.

Meanwhile Yuvraj Karan Singh, the Regent of Jammu and Kashmir State and the son of His Highness Hari Singh, issued a proclamation for the convening of the Constituent Assembly on April 30, 1951[49]. But Mr. Zaffar Ullah Khan in a letter to Security Council strongly protested against Karan Singh's proclamation fearing that the same would create an explosive situation and prejudice further negotiations on Kashmir dispute[50]. The delegates of U.K. and U.S.A. severely criticised India for having sanctioned the convening of a Constituent Assembly to prejudice the issue before the Security Council. When Security Council met to consider the letter[51], Sir B.N.Rau, in reply to the complaint lodged by Pakistan in Security Council and speaking on Anglo-American[52] resolution of February 21,1951 explained the legal position regarding the convening of the Constituent Assembly. He pointed out that the State of Jammu and Kashmir being a unit of Indian Federation, which acceded to India in respect of three subjects, was completely entitled to frame its own Constitution and thus to convene a Constituent Assembly of the State[53]. This was further confirmed by Sheikh Mohd. Abdullah while addressing the AICC Session held in July 1951[54].

3.2. Election of Constituent Assembly

In spite of bitter criticism against the convening of State Constituent Assembly by some political parties and leaders, Pakistan Press and Government as well as different countries in Security Council, the State Government proceeded further. There seemed to be no controversy on the size of the Constituent Assembly as was in the case of the size of Indian

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Constituent Assembly[55]. Therefore, unlike Praja Sabha[56] hundred seats were fixed for the Constituent Assembly of which twenty five were kept vacant for Pak Occupied Kashmir[57] area. Thus the election was only for 75 seats- 45 seats for Kashmir and Ladakh and 30 seats for Jammu[58]. The preparation of provisional electoral rolls[59] began on December 18, 1950 and they were supposed to be ready in March 1951[60] but were published throughout the State on June 4th, 1951[61]. The function of preparing electoral rolls had been entrusted to 43 Electoral Registrars, who were mostly special Tehsildars dealing with land reforms work and Presidents of the Municipal Committees in Jammu, Srinagar and Poonch. The government had also appointed 41 revising authorities- 20 in Jammu, 19 in Kashmir province, and two in Ladakh district, who were mostly judicial and Revenue Officers, for purpose of receiving, hearing and deciding claims and objections with regard to provisional rolls of the Constituent Assembly. According to the rules promulgated in relation to J&K Constituent Assembly, the electoral rolls for each constituency were to be prepared in Hindustani using Urdu script[62]. The Government of Kashmir (or Constituent Assembly election rules) had fixed Rs. 3,000 in all or two annas per voter as the maximum expenditure that might be incurred by a candidate contesting election to the Constituent Assembly from any constituency. The Constituent Assembly election rules also laid down that the method of settling election disputes would be decided by the Constituent Assembly itself or its nominated bodies and not by a tribunal set up by the government. The rules contained a warning to government servants against infringement of election rules or interference in the conduct of the elections. Attempts by parties or candidates at inciting communal passion or at violence during the election would be considered an offence punishable under the law. Separate polling booths would be provided for women voters[63]. The period for preferring of claims and objections was originally scheduled to expire on the 25th June, 1951 ,but in the interest of the public convenience the same was ultimately extended to July 10, 1951[64]. In pursuance of the proclamation of Yuvraj Karan Singh dated April 30, 1951 the government of Jammu and Kashmir announced rules for the conduct of elections to the Jammu and Kashmir Constituent Assembly[65].

Table 2 will give an idea of total population and the number of voters and their community wise distribution.

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Table : 2

Total Population and the Number of Voters and Their Community-wise Distribution

Name of Province	Muslims Voters	Hindus Voters	Sikhs Voters	Buddhists Voters	Other Voters	Total No. Voters	Total No. Minors	Total Population
Kashmir	8,51,613	44,211	8,825	–	279	9,04,828	7,78,767	16,83,595
Jammu	1.78,518	4,58,983	17,835	–	2,981	6,58,317	8,28,912	11,87,229
Ladakh and Kargil	22,433	62	6	25,418	121	48,040	32,111	80,151
Total	10,52,464	5,03,256	26,666	25,418	3,381	16,01,185	13,39,790	29,50,975.

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A perusal of the table will show that voters formed 55% of the total population. It was definitely a much higher percentage as compared with the percentage of voters of Praja Sabha.

3.2.1. Who Could Vote

Unlike the case of Praja Sabha[66], every State-Subject who was not declared of unsound -mind by any competent court and not disqualified from voting under provision of any law relating to malpractice and other offences in connection with election, after the promulgation of the rule, could be eligible to be registered in the electoral rolls of any electoral area if he was 21 years of age on March 1,1951 and had been an ordinary resident of the electoral area for not less than one week during two years preceding Baisakh 2008 Bikrami[67], one could register himself in any number of Constituencies but could vote in only one of them.

3.2.2. Who Could Contest

One could contest the election only if he was a first class State-Subject and a registered voter in the province in which he wished to contest, was a literate and had attained the age of 25 on or before August 1,1951[68]. A person would be disqualified from contesting any seat for Constituent Assembly if he held an office of profit in Jammu and Kashmir Government, in the Government of India or any local body in the State Government or was a whole time employee of a municipality of a local body in the State. But that would not apply to the Ministers of Jammu and Kashmir Government or pensioners of Jammu and Kashmir Government or Government of India or whole time employees of a Cooperative Society. A person would also be disqualified[69] if he had been convicted for an offence punishable with imprisonment for not less than two years or if having held office under the Government of India or any State Government in India or Jammu and Kashmir Government had been dismissed for corruption, unless in both cases a period of three years or such less period as was allowed by the Commissioner had elapsed since his release or dismissal respectively; if he was of an unsound mind as declared by a Competent Court or if he was not discharged as an insolvent or being a discharged insolvent had not obtained from a Competent Court a certificate that his insolvency was caused by misfortune without any misconduct on his part.

3.3. A Delimitation Committee

A Delimitation Committee[70] was constituted which consisted of a Judge of Jammu and Kashmir High Court (Mr. M.A.Shahmiri) and four other members of the rank of Dy. Commissioners from the Revenue Department.

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In defining the territorial limits of a Constituency, the Committee would take a population of 40,000 as nearly as possible, living in a compact contiguous area with due regard to physical features and means of communication, as the basis and might, wherever, it deemed necessary, waive a margin not exceeding 10 per cent[71] .

The All Jammu and Kashmir Praja Parishad which had previously criticised the Convening of Constituent Assembly to draft a separate Constitution for the State, at its Working Committee meeting on May 8, 1951 decided to contest the elections and demanded[72] representation in Delimitation Committee. Kavi Raj Vishnu Gupta, President Jammu and Kashmir Pursharthi Sabha requested he Kashmir Government which had already accepted the right to vote of all adult Kashmiri refugees residing in India, to instruct the Delimitation Committee to set apart three seats for these refugees in the Nagrota Camp and also to make proper arrangements for their postal balloting if necessary[73]. A convention of Sikh parties, held at Srinagar on August 6,1951 demanded more seats[74] for Sikhs in Constituent Assembly than in old State Legislature. The Government, however, accepted the recommendations of the Delimitation Committee according to which Kashmir province was divided into 43 Constituencies, Frontier Districts of Ladakh and Kargil into two Constituencies, and Jammu province into 30 Constituencies[75].

The Jammu and Kashmir National Conference had got printed an anna stamp with a picture of Sheikh Abdullah, President of the Conference, on one side and the "Plough" the emblem of the Conference on the other. The stamps were sold to the public who would thus contribute to the election funds for the Conference. The General Secretary of the National Conference had earlier announced that it would approach the masses rather than rich people for funds to fight the elections[76].

Foreign correspondents and observers flocked to the State to witness the elections to this important body and people were assured of a free and fair exercise of their vote[77]. But on the other hand, the very announcement of coming elections for Constituent Assembly created panic among the Pakistani leaders and it led to press hysteria, troops movement and finally threats of Holy War. They tried to encourage rival candidates and make people on their oath to vote for them, but failed[78].

In Kashmir and Frontier districts the National Conference obtained an absolute majority since 43 out of 45 candidates were returned unopposed, one week before the election date[79], and in the rest of two Constituencies i.e. Baramulla and Haba Kadal at Srinagar the rival candidates, who had submitted their nominations first, ultimately backed out[80].

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The outright victory of National Conference was described by Maulana Mohd. Sayed as an unequivocal reply of Kashmiri Muslims to Pakistan[81]. in Jammu Province the All Jammu and Kashmir Praja Parishad-the only effective opposition party-which decided to contest elections and stood for unconditional accession of the State to Indian Union and adoption of Indian Constitution in toto, complained to the Commission of a number of irregularities and adoption of all fair and foul means in Jammu election. Pt. Prem Nath Dogra, the President of All Jammu and Kashmir Praja Parishad in a Press release at Delhi on October 6,1951 mentioned the adoption of following malafide tactics by the Government:

1. Not holding elections in the provinces of Kashmir and Jammu simultaneously ;
2. Irregular Delimitation ;
3. No general seats in three Constituencies ;
4. Out of the way Polling Stations ;
5. 41 out of 65 nominations of Praja Parishad candidates being rejected on the most flimsy grounds :
6. Favour towards the National Conference candidates; and
7. official interference[82].

Pt. Prem Nath Dogra also met Mr. Gopala Swami Ayyangar, the then Minister of States, and reported about all these irregularities and made the following suggestions:

1. To hold an independent, Judicial inquiry into the rejection of the nomination papers of the Praja Parishad candidates in all the 27[75] Constituencies from where it had originally put up its candidates.
2. To appoint some Supreme Court Judge to conduct the elections in Jammu, to assure perfect impartiality ; and
3. To prevent Government servants from working for candidates of any party in the State[84].

The General Secretary of All Jammu and Kashmir Praja Parishad in a letter to State Election Commissioner dated December 5,1951[85] made similar complaints. The other allegations were:

1. that National Conference was unpopular and that people were not even interested in the elections ; an
2. the mass imprisonment of people opposing the National Conference.

In another resolution[86] it gave an ultimatum to the Government to set right deliberate rejections of Praja Parishad candidates upto September 27, 1951 noon failing which the party might go to the extent of boycotting the elections.

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After repeated but fruitless requests and ultimatums of Jammu and Kashmir Praja Parishad ultimately in a telegram to Prime Minister of India on October 9, 1951 (and not on October 12,1951 mentioned by Jyoti Bhushan Dass Gupta in his book Jammu and Kashmir, p.186) boycotted the elections under protest[87]. The copies of the telegram were also sent to President of India[88]. and N. Gopalaswami Ayyangar.

Maulana Mohd. Sayed, General Secretary of All Jammu and Kashmir National Conference in a press release[89], while commenting on Praja Parishad boycotting the elections, defended the Government against all the allegations made by Praja Parishad in their resolution of October 1951. He alleged that Praja Parishad was a communal organisation which was basically opposed to the idea of convening Constituent Assembly. He added that Praja Parishad lacked popular support and that when they apprehended a landslide victory for National Conference in Srinagar, they got perplexed and were doubtful of their success and thus decided to boycott the elections. The National Conference secured all the 75 seats[90].

3.4. The Controversy Over the Fairness of Elections

The National Conference captured all the 75 seats of the Consembly because of its policy, programme and leadership. Its leaders not only outrightly rejected all the allegations levelled against it but also brought forth counter charges. So far as first allegation (i.e. not holding elections in the province of Kashmir and Jammu simultaneously) was concerned, their answer was that dates for the elections were decided strictly according to the climatic conditions[91] prevailing in different parts of the State. Since the State stretched from the snow covered frontier areas, and the mountain valley of Kashmir, right down to the hot plains of Jammu, it was obvious that one election day would have been totally unsuitable for all the three regions. Even in India different election days were fixed[92] for the very same reason. While answering the second allegation (irregular Delimitation) the National Conference leaders pleaded that Government had sanctioned Delimitation of Constituencies on the recommendations of Delimitation Committee comprised of four senior and experienced Deputy Commissioners, two from each province, presided over by a Judge of High Court[93]. In answer to the allegation No.4 (out of the way polling stations) they pointed out that the polling stations were fixed not only by the Returning Officers and the Election Commissioner, but after round table consultations with the people of all parties in the area concerned[94]. The fifth allegation (forty one out of sixty five[95] nominations rejected) was also denied on the ground that the total number of rejections[96] was 14 and that withdrawals numbered eleven only. The charges of unfair means[97] and

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mass imprisonment of the people opposing National Conference were also denied on the ground that the jail inmates of Jammu and Kashmir in September 1951 numbered 482[98] whereas the total population was three million. Out of the total jail inmates 155 were detenus (141 from Kashmir and 14 from Jammu) connected with the exigencies of War and the conditions created by the Cease-Fire Line. Thirty seven were persons who had infiltrated into the State to create internal disorder and instigate border raids; 31 had been arrested for espionage; 3 had illegally crossed over to this side of the cease fire line. Another 41 were indulging in illicit trade with the enemy; 22 were habitual offenders; the remaining 14 had been detained for rumour mongering. Out of 155,87 were from the Baramulla District. The remaining convicts and under trials fell under general criminal category like murder, dacoity, theft and petty offences. While answering the allegations that National Conference was unpopular and the people were not interested in the elections, the leaders quoted the figures and facts for the last 20 years and said that even under the inclement conditions prevailing during the previous autocratic rule, Sheikh Mohd. Abdullah's party had captured successfully all the muslim seats thrown open to elections in the Legislature of the time.

Its popularity can be imagined by the fact that it continued to maintain communal harmony in Kashmir even when whole of the northern India was in the flames of communal riots. Another strong proof of its popularity was its return to power in all the subsequent elections some of which were even conducted under the supervision of the Indian Election Commission[99]. On the other hand the National Conference leaders charged[100] Praja Parishad for provoking riots on a large scale and for disrupting the peace and tranquillity of he State so as to make the holding of elections impossible.

Levelling allegations against one another is a very common practice followed specially by the defeated candidates and political parties in all general elections. Allegations do not always mean that elections are far from fair and free. Even in Indian opposition parties do always levy similar allegations. One of the reasons of the National Conference's victory was that almost all its candidates in Kashmir Province were those who had played a major role in the freedom movement, had jumped into freedom struggle right from their student life and had been imprisoned a number of times[101]. The people still remembered their devotion, sacrifices and their role at the time of tribal invasion. Thus, it was not a surprise if no opposition candidate could dare to contest. The National Conference candidate in Ladakh was Kaushak Bakulla, the Head Lama and his opposition at that time was out of imagination. In Jammu Province also National Conference gave mandates to those who were very active and made sacrifices in the freedom struggle for Kashmir. Out of

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30 candidates 15 had joined[102] National Conference at an early age or in student life and had been imprisoned a number of times. Where such old workers were not available the pick and choose method applied. No doubt the Praja Parishad was the only effective opposition party in Jammu but it was not popular in all the areas. Even if the Praja Parishad had contested the elections it would not have been able to capture all the 27 seats[103]. The election results of two Constituencies the opposing candidates were independents but supported by Praja Parishad. Both these were prestigious constituencies and were a test of the strength and popularity of the parties. Each party exerted its full force to win. But both the results went in favour of National Conference. One of the Foreign Papers, the Manchester Guardian wrote :

The Jammu Elections are a great and quite genuine victory for the National Conference[104].

It is equally wrong to conclude that the Praja Parishad if it contested would have not secured even a single seat. The boycott of the other parties[105] namely Kissan Mazdoor Conference, the Kashmir Democratic Union, the Kashmir Socialist party, the Muslim Conference and Akali Dal, was meaningless as none of these parties were so popular to contest and win. Sheikh Abdullah was reported to have forecast long before the withdrawals that the Praja Parishad would avoid an open fight. Knowing the political advantages that accrue from a demonstration of injury through 'majority tyranny' the Parishad had probably sound reasons for not contesting[106].

Dewan Chaman Lal, in a broadcast, pointed out that the elections to the Constituent Assembly were duly held under adult franchise and a vast democratic experiment was initiated for the first time in Kashmir's history. Referring the victory of National Conference, he added that:

This victory has been hailed quite rightly as a victory for those who opposed the two nation theory, for the elections have shown that nearly three million inhabitants who formed the present population of Kashmir, are united in their rejection of religious fallacies, believe in Democracy and in a secular state and are anxious to align themselves with India where they can breathe the same air of democracy as in a welfare state[107].

While rejecting all allegations levelled from different quarters, in and outside the State, and calling them patently unjust the Jammu and Kashmir Government issued the following statement:

To sum up, this has been a perfectly normal election. In the Kashmir valley, where the invasion threat was and is at its grimmest, the Kashmiris have made a joint front with the National Conference, regarding the basic ideals of brotherhood for which they are fighting as more important than

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mere surface differences. Those who have faced Hitler in the West, when the masses upheld coalition Governments against a common enemy, will understand how in Jammu the National Conference has faced its natural enemies, those who have been fighting for a State dominated by one religion instead of the secular democratic ideal, which makes no distinction between man and man, and religion and religion. Since it is the most popular party, the most deeply rooted in the life of the people, it was, in both these areas, bound to succeed[108].

3.5. Sociological Analysis of the members

The following implications stand out so far as the Sociological Analysis of the members of the Constituent Assembly is concerned:

1. The Muslims form the largest communal group represented more in the Consembly. This is as it should be since they represent the largest percentage of the population.

2. The tendency was to over-represent majority and under-represent minority groups.

3. From the females, which constituted about half of the population were drawn only two women both from Jammu region. One of them was a house wife and the other a house wife as well as a social worker.

4. The highest percentage of members held University degrees. The next highest percentage of the members was of law graduates. Next came the categories of members with primary-middle education and College education. There was some percentage of members who could simply read and write.

5. The largest number of members was in the age group of 31-35 years. This signifies that the youth were more represented in Consembly than other groups. Thirty three members were between 41-60 years and hence were those who had witnessed not only suppression of autocrative rulers but also the rise of political consciousness and of nationalism, struggle for freedom and even post-independent days.

6. The largest number of members had been attracted to politics between the age group 15-20 years. Most of the members had remained active in politics since 1931, when the seed of struggle for freedom was sown in the state.

7. The highest number of members were having politics as their occupation. The next largest group was from the legal profession. It was not surprising that agriculture was the occupation of the third largest group of the members since J&K is principally an agricultural state.

8. The largest number of the members represented an annual income group of below Rs. 5,000. This was very low but it was not out of proportion

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to general income level of the State. The average national income per capita was Rs. 188.41 for the year 1950-51.

9. 30.77 percent members had been sentenced to jail for different terms for political activities. Warrants had been issued against 5.13% members, but they could not be apprehended. This would seen to indicate that the sufficient representation had been given to those who took part in the struggle for freedom in the state.

10. The majority of the members had neither previous legislative experience nor administrative or local government experience.

While commenting on the nature of the Constituent Assembly the Organizer Weekly from new Delhi in its Article "Inside Kashmir" mentioned: Most of the members of the Constituent Assembly being little educated could speak neither Hindi nor Urdu. They would therefore, speak in Kashmiri or Dogri. A speech in Kashmiri would be all Greek to the Dogra members from Jammu and a speech in Dogri by the members of Jammu would be all Latin for Kashmiris[109].

The Daily Statesman, New Delhi gave a befitting reply to these charges in one of its articles "Future Constitution of Kashmir" "It would not only be unfair but totally incorrect to underrate the calibre and collective ability of the 75 members of the Constituent Assembly. Nearly one third of them are qualified lawyers, quite a f ew having successful practice in local courts. Practically, although differing in dress and occupation, they seem to have a lively sense of their responsibility. Though far from perfect yet in procedural matters, most of them speak well"[110].

One of the most responsible positions in regard to the work of the Constituent Assembly is held by the Constitutional Adviser Mr. M.A.Shahmiri who like Sir B. N.Rau during the discussion on the Indian Constitution, was not a member of the House. He was a judge of the State High Court but had previously held important Judcial Executive appointments[111].

Sheikh Abdullah's greatest single asset was the strength of the J&K National Conference which represented a unity of purpose and an organizational competence surpassed by few political parties in the East. Excellent leadership at the top and a simple, workable ideology were mainly responsible for that solidarity. Two additional, though less important, reasons were the prestige and value of Mr. Nehru's friendship for the State Premier and a common bond of bitterness against the Muslim League in Pakistan.

Team work among the senior leaders was impressive. So far disagreement, if any, had arisen largely over emphasis or details rather than over substance. In no case a ruling given by Mr. G.M.Sadiq is known to have been seriously challenged or disobeyed. Discipline in the party's ranks,

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especially at the top remained as strong a principle as the ideology itself. The relationship between Sheikh Abdullah and his next in command, Bakshi Ghulam Mohammad, was remarkable when it was realized that in temperament and partly in upbringing, the two were far from identical. While Sheikh Abdullah was primarily an idealist, who would spurn any deviation from rules, Bakshi Ghulam Mohammad had a deep sense of practical politics.

This difference of approach was reflected in their views on administration and in their relations to human beings. When Sheikh Abdullah chose to be lofty and somewhat aloof, his Deputy settled an argument without fuss by quick decisive action.

Of the other leaders, a high place of honour was reserved for the party General secretary, Maulana Mohammad Sayeed Masoodi, who though just for one day, had acted as President of the State Constituent Assemnbly. At the extreme left of the party were Mr. G.M.Sadiq, the permanent President of the Constituent Assembly, and Mr. D.P.Dhar, formerly a Deputy Home Minister and the strongest Hindu supporter of Sheikh Abdullah. Mirza Afzal Beg, the Revenue Minister was among the six important members of the Senior team.

REFERENCES

1. Encyclopaedia of Social Sciences, Vol 3-4, p.244
2. Dunning William Archibaid: History of Political Theories From Rousseau to Spancer, Central Book Depot, Allahabd 1967, p.103.
3. Jennings, Sir Ivor: The Law and the Constitution, IVth ed. University of London Press Ltd. Warwick Saquare London, E.C.p-7.
4. India Quarterly Vol. VII NO.2 April-June, 1951.
5. Dhar, P.N: The Kashmir Problem- Political and Economic Background. Indian Council of World Affairs 8-A, Kashi House Cannaught Place, New Delhi, 1951 (Introductory Note.
6. Constituent Assembly for Jammu and Kashmir. B.P.Sharma, Principal Information Officer, J&K Government, 1952.
7. C.A. Deb (India) Vol. X No.10. p. 424.
8. Hamdani Ghulam Mohi-ud-Din: Our Constituent Assembly, Mujahid Manzil, Srinagar, September, 1951.
9. Ibid.
10. Saraf, Mohammad Yusuf: Kashmirs Fight For Freedom, Vol. 1 Feroz Sons Ltd. lahore-Pakistan 1977, p.335.
11. Ibid.
12. Ibid, p.337.
13. New Kashmir : Op.cit.
14. Vital Speeches and Documents of the Day Vol. XXIII, Vol.IV, Nos XXII, XXIII and XXIV No.15, December 1 and December 15, New Delhi, 1963, p.825.

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15. Anand, Adarsh Sein: The Development of Constitution of Jammu and Kashmir (unpublished thesis) Faculty of Law, University of London, 1963, p.90.
16. Tewari, Uma Kant: The Making of the Indian Constitution, Central Book Dept. Allahabad, 1969 p. 15 Mentioned that missiong consisted of Lord Pothick Lawrence, Sir Staffor Cripps and Mr. A.V. Alexander.
17. (*i*) India and Kashmir-Constitutional Aspect, Op.cit. pp 1-2 mentioned : "That paramountcy could neither be retained by the Crown nor transferred to the Government... right surrendered by the States to the paramount power would revert to the States...the void thus created would have to be filled up by cooperation between States and the Government- this need not be indentical for all the States".
(*ii*) Sheikh Mohd. Abdullah in his opening address to Jammu and Kashmir Constituent Assembly, Srinagar, November 5, p 7 : pointed out that the National Conference in its historical memorandum to Cabinet Mission declared :
"Today the National Demand of the people of Kashmir is not merely the demand of responsible Government but their right to absolute freedom from the autocratic rule".
18. (*i*) Phillips, C.H. and Wain Wright, Mary Doreen in their book *The Partition of India Policies and Perspectives,* 1935-1947. George Allen and Unwin ltd. 1970, p.220 pointed out that Congress leaders were extremely critical of the declaration made by the British Government that Paramountcy was to lapse on August 15,1947 and that the rulers of the Indian States were to become technically and legally independent, because they felt that it posed a grave threat to the stability and integrity of India. They insisted that the princes must make up their mind to accede to India or Pakistan taking into account their geographical situation before August 15,1947. Mr. Jinnah on the other hand, insisted that the rulers had absolute freedom of decision.
(*ii*) India and Kashmir-Constitutional Aspect, Op.cit. pp 1-2
"Pointed out that Lord Mountbatten, the Viceroy advised the princes on July 25, to link their future with either of the two Dominions they liked, subject to certain geographical compulsions.
19. (*i*) Maharaja to Muntbaten, Letter of October 26,1947.
(*ii*) The Hindustan Times dated October 14,1947.
The Maharaja's intention had been earlier made public by his Deputy Prime Minister, R.L.Batra, in an interview in Delhi. He said:
"We intend to keep on friendly relatins with both India and Pakistan. Despite constant rumours, we have no intention of joining India or Pakistan and the Maharaja and His Government have decided that no decision of any kind will be made until there is peace in the plains. The only thing that will change this decision is if one side or the other decides to use force against us....The Maharaja has told me that his

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ambition is to make Kashmir Switzerland of the East-a State that is completely neutral. As much of our living depends on visitors, we must think of them. Visitors will not come to a State which is beset with communal troubles. Kashmir he added would develop as a pleasure resort and they were in an extremely important geographical position. Our borders touch six countries-India, Pakistan, Tibet, Russia, Afghanistan and Sinkiang.

20. Mahajan, Mehr Chand: Kashmir Problem in its true Prospective, Hindustan Standard, June 3, 1957, New Delhi, p.6.
21. Setalvad, M.C: My Life, Law and Other Things, N.M.Tripathi Publishing Book, Bombay, 1970, p.30.
22. Zutshi, J.N: Kashmir's Journey to Freedom, Op.cit. p.8.
23. Prime Minister Pt. J.L.Nehru's Speech on Kashmir in the Council of States, Press Information Bureau, Government of India, New Delhi, August 1952,p.7.
24. All Jammu and Kashmir National Conference 21st Annual Session-Political Resolution published by Abdul Rashid, General Secretary, All Jammu and Kashmir, National Conference (Camp) Jammu, year unknown, p.4.
25. Proclamation Shreeman Inder Mohinder Raj Rajeshwar Maharaja Adhiraj Shri Hari Singh, Ruler of Jammu and Kashmir and dependencies, Jammu March 5,1948.
26. (*i*) Jammu and Kashmir Government Gazettee, March, 1948.
(*ii*) Gupta, Jyoti Bhushan Dass: Jammu and Kashmir, Martinus Nijhoff, The Hague, 1968, p.188. The government was constituted of the following:

1. Sheikh Mohd. Abdullah	Prime Minister
2. Bakshi Ghulam Mohd.	Deputy Prime Minister
3. Mirza Afzal Beg	Revenue
4. Sardar Budh Singh	Health and Rehabilitation
5. G.M.Sadiq	Development.
6. Sham Lal Saraf	Civil Supplies and Local Self Government
7. G.L.Dogra	Finance
8. Pir Mohammad Khan	Education.

27. Abdullah, Sheikh MOhd: Jammu and Kashmir, 1947-50, Printed by Ranbir Govt. Press, Jammu and published by B.P.Sharma, Principal Information Officer, J&K Government year unknown, p.3.
28. India and Kashmir-Constitutional Aspect, Op.cit. p.3.
29. The Hindu, Madras, 26.6.1949.
30. Ibid, p.3.
31. Constituent Assembly of India Debate. Vol. X dated October 17, 1949, p.244.

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Gandhi Memorial College Of Education Bantalab Jammu

32. Goni, Abdul Gani, Sheikh Mohd. Abdullah An Assessment, New Kashmir Press, Srinagar, year unknown p.10.
33. Constitutent Assembly for Jammu and Kashmir-Resolution adopted by the General Council of the All Jammu and Kashmir National Conference on the October 27, 1950 published by B.p.Sharma, Principal Information Officer, Jammu and Kashmir Government year unknown p.1.
34. Speech of Shri N.C.Chatterjee, M.P. In the House of the People on the President's address on the May 20, 1952. Published by All India Hindu Maha Sabha, Reading Road, New Delhi-2, year unknown, p.3.
35. Constituent Assembly for Jammu and Kashmir, Resolution, op.cit. p.5.
36. (*i*) Amrit Bazar Patrika, Calcutta October 31, 1950.
    (*ii*) Constituent Assembly for Jammu and Kashmir , op cit.
37. The Hindustan Times, November 24, 1950.
38. Constituent Assembly for Kashmir-State Press hails the decision-Kashmir Bureau of Information file C-4(Part-1) October 1950- August 1951, Reference Research Unit, Information Dept. Srinagar.
39. A Pamphlet issued by Durga Dass Verma, Secretary, All Jammu and Kashmir Praja Parishad on March 12, 1951 pp files Jana Sangh Head Office, Jammu.
40. The Hindustan Times, New Delhi, December 18,1950.
41. (*i*) Dawn, Karachi, Wednesday, November I, 1950.
    (*ii*) The Hindustan Standard, December 28,1950.
42. (*i*) *Dawn,* Karachi, November 4,1950, p.10.
    (*ii*) *Dawn,* Karachi, January 22,1951.
43. (*ii*) All J&K National Conference, 21st Annual Session Political Resolution, Op.cit.
    (*ii*) Constituent Assembly for Jammu and Kashmir, op.cit.
    (*iii*) Amrit Bazar Patrika, Calcutta, Octobe 31, 1950.
    (*iv*) The Hindustan Times, Delhi November 24, 1950.
    (*v*) Sheikh-Sadiq Correspondence (August to October, 1956), Mridula Sarabhai, 81/48, Chanakya Puri, New Delhi, year not mentioned p.6.
    (*vi*) Hamdani, Ghulam Muhi-ud-Din, Our Constituent Assembly, Mujahid Manzil, Sriangar, September 1951, p.9.
    (*vii*) Mir. Ghulam Mohammad and Koul, Manohar Nath, Conspiracy in Kashmir, a brief review of social political study group, Amirakadal, Srinagar, Kashmir, year not mentioned p.9.
44. (*i*) The Hindustan Times, New Delhi, December 18,1950.
    (*ii*) A Pamphlet issued by Durga Dass Verma, Op.cit.
45. (*i*) Dawn,Karachi, November Ist, 1950.
    (*ii*) The Hindustan Times, December 28,1950.
46. (*i*) Dawn, Karachi, January 22,1951.
    (*ii*) Dawn, Karachi, January 22,1951.

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Gandhi Memorial College Of Education Bantalab Jammu

47. Kumar, Vijay: Anglo-American Plot against Kashmir, People Publishing House Ltd. Bombay-4, March,1954, p.6.
48. Ibid. p.209.
49. (*i*) Jammu and Kashmir Government Gazette Extraordinary dated Ist May 1951.
(*ii*) The Hindustan Times, New Delhi, May 7,1951.
50. The Hindustan Times, New Delhi May7,1951.
51. Rao H.S.Gururaja: Legal Aspects of the Kashmir Problem, Asia Publishing House, New Delhi, 1967, p.81.
52. Goni, Abdul Gani,Sheikh Mohd-Abdullah-An Assessment, Op.cit. p.12. Criticising the Anglo-US Resolution introduced in Security Council Sheikh Mohd. Abdullah said :
"...the attitude which the draft resolution reveals towards the Constituent Assembly comes as a painful reminder of all the dilatory means which have so far delayed subjecting Pakistan to the penalities of an aggressor, who has invaded our country. On the other hand, the attitude of the promoters of this resolution towards the Constituent Assembly appears as an attempt to stay the democratic development of a people who wish to build the framework of their Government in a democratic manner. Our development as a democratic people demands convening of Constituent Assembly. It is the highest organ reflecting the people's will. We cannot wait indefinitely and hold up our march for ward. We want to get to our peole. We want to get their mandate. We want to draw sanction from their will".
53. The Hindustan Times, May 3,1951.
54. Decan Herald, Banglore, July 15, 1951.
55. Tiwari, Umakant in his book The Making of the Indian Constitution (Central Book Depot, Allahabad, p.49) pointed out that Sir Maurice Gwyer favoured a small body, whereas Pt. Jawahar Lal Nehru suggested a large body consisting of 300-400 members. Pt. Nehru added that in a small body the same members would be in the Committees and the in the House, and so, there would be no hope of a fresh approach. "A largebody necessarily means more ideas thrown into the Common pool and extreme views are not likely to prevail". B.N.Rau.
56. According to Notification issued by Shiv Ram Saraf Secretary to His Highness Government, Praja Sabha Department dated 9th September 1943, Praja Sabha consisted of: Official members-11, Elected Member -40(H.17, M.23) Nominated members.24 (H.13,M.11) Total members 75.
57. Amrit Bazar Patrika, Calcutta, December 23,1950.
58. Gupta, Jyoti Bhushan Dass: Jammu & Kashmir, Op.cit.p.186.
59. File C-4(Pamphlets) Kashmir Consembly (A typed note), Reference and Research Unit Information Department, Sriangar, p.2 mentioned:"For

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the purpose of enrolment of the voters the Patwar Illaqas were taken as electoral areas.Enumeration was enstrusted to teachers from Education Department, of course, aided and guided by the concerned patwaris. Patwar Illaqas falling within a tehsil formed the province of an Electoral Registrar, who was generally an officer of the rank of a Tehsildar from the Revenue Department. The Electoral Registrars were assisted by Naib Tehsildars, Girdawars and Oficers of the Education Department in the area. For the cities of Srinagar and Jammu and Poonch, however, the concerned President of the Municipal Committees were appointed as Electoral Registrars.

60. (*i*) A Press Note issued by Jammu and Kashmir Government of April 30,1951.
(*ii*) *The Times of India,* New Delhi,May 1,1951. 61. File C-4(Pamphlet) Kashmir consembly (a typed copy) Reference and Research Unit of Information Department, srinagar, p.2.
62. The Hindu, 11.6.1951.
63. National Herald (Lucknow), 21.9.1951.
64. Ibid,.p.2.
65. (*i*) Government of Jammu and Kashmir, "Jammu and Kashmir constituent assembly" Election (Part-1) Rules, 2008, Jammu Government Press, 1951, It dealt with the following topics:
(*a*) Qualifications and disqualifications for membership of constituent Assembly Chapter II, Section 3 and Section 4.
(*b*) Nomination of candidates Chapter III section 5 to Section 32.
(*c*) Administrative Machinery for the conduct of Election Ch. Section 33 to Section 43.
(*ii*) Government of Jammu and Kashmir,Constiuent Assembly Election PartII) Rules, 2008, Jammu Government Press, 1951, Chapter IV. It dealt with:
(*a*) Candidates and their agents-Chapter II, Sec. 3 to Sec.12
(*b*).The Poll-Chapter III, Sec 13 to Sec. 52.
(*c*) Return of Election Expenses-Chapter IV, Sec. 53 to Sec. 61.
(*d*) Corruption and Illegal Practices-Chapter V, Sec.62 and Sec. 63.
(*e*) Disputes regarding Elections-Chaqpter VI, Sec 64 and Sec. 65.
66. Election in Kashmir: The Publication Division, Ministry of Information and Broadcasting, Govrnment of India, Oxctober 1957 at p.2 mentioned qualifications for those who could vote for Praja Sabha. These were "Village and Districtheadmen, priests and managers of religious property, titleholders, pensioned officers, medical practitioners, lawyers and those who had passed the Middle School Examination or its equivalent only could vote. Women were not given the right to vote as in the words of the Frnchise Committee "the inclusion of women voters would increase the adminsitrative dificulties of the election".

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67. The Hindustan Times Daily May 30,1951. p.8.
68. (*i*) Ibid, p.2.
(*ii*) The Hindustan Times, Delhi, 19th August, 1951, p.8.
69. Ibid, p.2. chap.II, sec.2.
70. Jammu and Kashmir Government Gazette (Extraordinary) 9th August, 1951.
71. File C-4 (Pamphlets) Kashmir consembly (A typed note). Reference and Research Unit Information Department, Sriangar, p.3.
72. The Hindustan Times, May 9,1951.
73. The Hindustan Times, Delhi July 30,1951, p.5.
74. The Hindustan, Delhi, August 7,1951, p.4.
75. Election Commissioner Jammu and Kashmir, Notification No.EC-7 dated 6.9.1951.
76. The Hindu Madras, 1.8.1951.
77. Elections in Kashmir, Op.cit. p.5.
78. Elections to Jammu and Kashmir Constituent Assembly, Ministry of Information and Broadcasting, Jammu and Kashmir, year unknown p.1.
79. Korbel, Joseph : Danger in Kashmir, Op.cit. p.222.
80. (*i*) Election to Jammu and Kashmir constituent Assembly, Ministry of I&B, J&K Year unknown.
(*ii*) Elections in Kashmir, Op.cit., p.5.
81. National Herald, Lucknow, September 3,1951 p.1.
82. (*i*) A Statement issued by Pt. Prem Nath Dogra, at Press Conference held in new Delhi on October 6,1951, Praja Parishad files Jan Sangh Head Ofice, Jammu.
(*ii*) Praja Parishad Stand explained", A pamphlet issued by Durga Dass verma, General Secretary All Jammu and Kashmir Praja Parishad, Jammu year unknown pp 8-14.
(*iii*) A plea to understand Praja Parishad " A pamphlet issued by Publicity Secretary All Jammu and Kashmir Praja Parishad on p.8 mentioned 41 out of 59 nominations.
83. Ibid, p.14-15.
84. Gupta, Jyoti Bhushan Dass : Jammu and Kashmir, Op.cit. p.186 mentioned 15 (constituencies)seats
85. Praja Parishad Files in Jan Sangh Head Office, copies of that letter were also sent to Prime Minister of the State, Dy. Prime Ministder, Prime Minister of India and Indian Minister of States.
86. Resolution adopted by Working committee of the All Jammu and Kashmir Praja Parishad which met on Sept. 22, 1951 pp. files of Jan Sangh Head Office, Jammu.
87. Praja Parishad Files in Jan Sangh Head Office Jammu.
88. Ibid,
89. Ibid.

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90. Constituent Assembly Debate, Vol.1 dated October 31,1951.
91. Elections to Jammu and Kashmir Constituent Assembly Op.cit. p.7.
92. Ibid., p.7.
93. Ibid.
94. Ibid,
95. A plea to understand Praja Parishad, A pamphlet issued by publicity Secretary All J&K , PP, Jammu, year unknown, p.8 mentioned rejection of 41 out of 59 p.p.nomination.
96. Election in Kashmir, Op.cit. p.5.
97. Gupta, Jyoti Bhushan Dass: Jammu and Kashmir, Op.cit. p.186.
98. Elections to Jammu and Kashmir Constituent Assembly, Op.cit. pp 5-6.
99. A Statement issued to press in 1951 by Maulana Mohd. Sayeed Masoodi, General Secretary All Jammu and Kashmir National Conference, Praja Parishad files, Jan Sangh Head office, Jammu.
100. Chagla M.C: Kashmir 1947-65, Publication Division, Ministry of Informtion and Boradcasting. Govt. of India, November 1965. p.34.
101. (*i*) Information supplied by living members of Constituent Assembly in reply to interview schedule prepared by the Researcher.
(*ii*) Jammu and Kashmir Constituent Assembly Who's Who.
102. (*i*) Infomration supplied by the living members of Constituent Assembly in reply to the interview schedule prepared by the Researcher.
(*ii*) Who's Who of the Constituent Assembly.
103. (*i*) Statement issued by Pt. Prem Nath Dogra.
(*ii*) Praja Parishad Stand Explained. A Pamphlet issued by Durga Dass Verama, General Secretary, All Jammu and Kashmir Praja Parishad, year unknown p.8.
(*iii*) But Jyoti Bhushan in his book Jammu and Kashmir at p.186 mentioned 15 seats (only).
104. M.C. Chagla's Speech in Security Council, p.16.
105. Sathu, Jagan Nath: Behind The Iron Curtain in Kashmir, Op.cit. p.57.
106. The Statesman, New Delhi, 14.11.1951.
107. Diwan Chaman Lal's Broadcast on All India Radio, Bombay on 1.11.1951.
108. Elections to the Jammu and Kashmir constituent Assembly Opcit,. pp 7-8.
109. Organizer Vol. V, 5th November 1951 No.12.
110. The Statesman Delhi, 8.11.1951.
111. The statesman Delhi, 14.11.1951.

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4
PRELIMINARY SESSION OF THE CONSTITUENT ASSEMBLY

The constituent Assembly of Jammu and Kashmir representing three million people inhabiting the state, excluding the Pak-Occupied area, met in Durbal Hall of the Old Rajgarh Place at Srinagar, where seven hundred artisans worked day and might to convert it into the Constituent Assembly Chamber[1] for the first time on Wednesday morning at eleven O'clock i.e. on 31st October 1951[2]. It was on that very day four years ago when Sheikh Mohd. Abdullah assumed charge as head of Emergency Administration after tribal attack on Kashmir[3]. Guns had boomed in salute to herald the historic occasion[4]. Magnificent centuries old carpets and exquisite wall decorations coupled with most up-to-date seating arrangement in the chamber presented a strange mixture of the best of everything[5].

The inauguration of the consembly was marked by scenes of great public enthusiasm in Srinagar and in other parts of the State, even in areas boarding the cease fire line. In other words the enthusiasm of the people there for the new set up was indeed undoubted and of remarkable[6]. Crowd which had gathered in front of the Assembly Hall cheered members and leaders both when they came and left[7]. As the proceedings went on inside the House, outside on the bands of the Jhelum, close to the Assembly Hall, thousands of Kashmiris men, women and children kept on shouting "Sher-i-Kashmir" zindabad and "Constituent Assembly" Zindabad[8]. At every street corner of the city, there were concerts, folk dances and scenes depicting the havoc caused by the tribesmen during the raids in 1947[9]. Pictures of Gandhiji and Pt. Nehru could be seen every where. Moreover, one could see the election poster and placards still adoring the walls of the houses all over the city. A grand regatta was organised in that day on the Jhelum river with hundreds of boats and shikaras participating. At night, the illumination on grant scale on the houses on the both sides of the Jhelum was also held and its reflection on the river water presented a magnificent sight[11].

Almost all the elected members were present in the house. In the front row seated Sheikh Mohd. Abdullah and other Ministers viz. Bakshi Ghulam Mohd; G.M.Sadiq; the head Lama of Ladakh and Muslim head of Kargil Syed Ibrahim[12]. The whole gathering was most impressive.

There was expectation that the Yuvraj Karan Singh- the then Head of the State would formally inaugurate the Assembly. But only a message from him was read to the House by the Secretary of the Constituent Assembly[13].

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It was in these setting that the first Consembly of Jammu and Kashmir met to give shape to the aspirations and dreams of struggling nation as depicted in Naya Kashmir programme of the All Jammu and Kashmir National Conference.

Obviously, the first task before the Consembly was to elect a Chairman[14] to preside over it and conduct its proceedings[15]. Apparently, the example of Indian Constituent Assembly which met in circumstances entirely different from that of Kashmir, had been followed and Sheikh Mohammad Abdullah proposed the name of Maulana Mohd. Sayed Masoudi- the then General Secretary of the All Jammu and Kashmir National Conference and the member of Parliament to occupy the chair of temporary Chairman on behalf of the House[16]. All eyes were set on this old, gentle dignified figure and personality which had mellowed through a long political experience and worked in the public field.

While proposing his name, Sheikh Mohammad Abdullah gave a sketch of Maulana Masaudi's political experience and eventful career. He said that Maulana Masoudi was one of the torchbearers of Kashmir's freedom movement, a professor in the College, received education in different institution in India and had he occasion to study-thoroughly the Indian politics in its different phases. He not only showed keen interest in their freedom struggle, acquainted the whole world with the prevailing conditions of the Kashmiri masses by the force of pen, guided the freedom movement at every critical stage but played a magnificent part in steering the ship a shore through severe storms also. His literary talent, broad vision and sincerity of action were well known to all of them[17]. Bakshi Ghulam Mohammad seconded the proposal and it was adopted by the house unanimously. Sheikh Abdullah conducted Maulana Mohd. Sayeed Masoudi to the Chair which he occupied in the great applause and acclamation[18].

As directed by the temporary chairman Pt. Hiranand Raina, Secretary Constituent Assembly red out the good will mesages[19] received from different Indian leaders and others to the House. Maulana Mohd. Sayed Masoudi then addressed the House. While welcoming the members he said that to understand the significance of that occasion, they should think of those days when Kashmir was under the clutches of slavery and helplessness for centuries together, when millions of people might have been born whose hearts must had throbbed with hopes and desires to raise their country from its miserable plight to a status which fulfilled of their cherished desires. The occasion was, therefore, of great importance. The first thing towards which he wished to draw the attention of the House was that a Constituent Assembly was a creation of the new age and the best instrument invented by the new age of progress for

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ascertaining the collective will and ambition of the people. But in reality the framing of a new constitution at the time of a newly won freedom was not a new thing and so the Constituent Assembly must had existed along side with the change of Governments. He added that with the change of the old regimes, the founders of new regimes must have pondered over the shape of the new edifice to be raised over the ruins of the old structure. In that manner at the termination of each old regime and beginning of the new, the presence of Constituent Assembly had been an essential concomitant of revolution. Another thing to which he referred was that of the decisions they would take there would not affect their country one for a year or two or ten or twenty years, but would leave an impression on the whole future history of Jammu and Kashmir. He further said that they had to shoulder many great responsibilities for they had the pride to enjoy the confidence and support of every adult person of the State. He pleaded and hoped that they, keeping all these things in view, would bring their work and by means of their attitude and ability and by using parliamentary ways in a polished manner could be an example and a light house for the generations to come[20].

After signing the register by members of the J&K Constituent Assembly, the Constituent Assembly adopted a resolution brought by Mr. M.A.Beg prescribing the procedure for the election of the permanent chairman who was proposed to be called president of the Consembly on Wednesday, the 31st October, 1951. Nominations were filed according to that procedure and on November 1,1951 the temporary Chairman informed the House that he had two proposals with him and both of them were in order. Both of them proposed the name of Mr. G.M.Sadiq. As no other name had been proposed, he declared Mr. G.M.Sadiq duly elected to the office of the permanent President of the Consembly on November Ist, 1951[21]. The moment Mr. Sadiq declared elected the house resounded with cheers. The moment he occupied the chair, there were prolonged cheers[22].

Congratulatory speeches were delivered by several members, prominent among whom were Sheikh Mohammad Abdullah, G.L. Dogra, B.A.Beg, Abdul Gani Goni, Kushak Bakula, Maulana Mohd Sayed Masoudi. General tributes to his ability and leadership in the struggle for the establishment of democratic rule in Kashmir were paid by Sheikh Mohd. Abdullah and number of other members of the Consembly representing Hindu, Sikh, Bhudhist and Muslim communities. Congratulating Mr. Sadiq on his unanimous election, Sheikh Abdullah said that since 1931 when the Kashmiri people raised their united voice in revolt against autocracy Mr. Sadiq had played a leading role and contributed his share in moulding the destiny of Kashmiris. They had survived many setbacks in their struggle for freedom and emerged stronger

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than ever and he was confident they would successfully overcome the crisis of that time too. He further added that Mr. Sadiq was not only in touch with the changing phases of the politics of his own land but he also fully acquainted with the different trends of the world politics. That was why the people had placed confidence in him at that time. He pointed out that Mr. Sadiq was entrusted with the mission of proceeding to Lahore and placing the view point of the Kashmiri people before the leaders of Pakistan in 1947. He went there accordingly, and represent his country. The ability and tact with which he advocated their view point before the Pakistan authorities was still fresh in their minds. While concluding his long speech Sheikh Mohd. Abdullah assured Mr. Sadiq, the President of the Consembly that the House would always extend complete obedience to his orders[23].

Mr. G.M.Sadiq, thereafter expressed his gratitude to the Assembly for electing him as President. While concluding his speech he said that it would be his duty to see that the dignity and privileges of the House as a whole were kept up. He added that he would also see that liberty and privilege granted by law and the Constitution to the Hon'ble members of the House individually were protected and acted upon. He pleaded that from that day every member of that House, whether on the treasury benches or in the opposition was equal before him and he would equally guard his rights and privileges[24].

4.1. The Declaration/ Resolution of Objectives

Usually the framers of the Constitution state their objectives in the beginning and then try to incorporate those objectives into the provisions of the Constitution. The Declaration of the American Independence (1776)[25] laid down the twin ideals of equality of men and securing to them certain inalienable rights i.e. the rights of "life, liberty and the pursuit of happiness". The French Declaration of the Rights of Man and Citizens[26] 1789 spoke of the equality of men and guaranteed to them the rights of "Liberty, Property, Security and Resistance to Oppression". New Kashmir[27]- the sociopolitical plan for rebuilding of the State and Magna Carta of National Conference spoke of the union of different regions of the State based upon fullest equality and self-determination, to raise the people from the abyss of oppression and poverty, degradation and ignorance into a sun lit valley of plenty ruled by freedom, science and honest toil[28].

The proclamation[29] of His Highness Maharaja of Kashmir dated 5th March, 1948 spoke of the establishment of a fully Democratic Constitution based on adult franchise with a hereditary ruler as a Constitutional Head, adequate safeguards to the minorities and guaranteeing freedom of conscience, freedom of speech and freedom of assembly.

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Like Pt. Jawahar Lal Nehru, who moved the objectives Resolution[30] containing broad objectives of the Constitution in the Constituent Assembly of India, Sheikh Mohd. Abdullah the then leader of he House also presented the broad objectives in his historic address to the Constituent Assembly on 5th November, 1951[31].

The Sheikh's inaugural address to the Jammu and Kashmir Constituent Assembly seems to have a three-old significance. In first place, the address is that of a leader who had been the Chief Architect of the freedom struggle in the State as a part of the larger National movement which ended the British Rule in Indian subcontinent. He has also played a leading role in the political drama of the State for about the past half-century, occupying the centre of the stage of the Kashmir political scene most of this time, and indirectly influencing it considerably when circumstances did not occasionally allow his direct presence on the stage.

Secondly, it spells out and highlights the principal Institutions and other empirical formulations which were sought to be enshrined in the State's Constitution and comprise the new Constitutional set up in Jammu and Kashmir.

Lastly, it is possible to discern in the address, a reflection of some sort of a political philosophy, an ideology or rather a mixture of ideologies and to abstract the same from the matrix of the empirical issues and a cluster of Institutions analysed and discussed therein.

In the very nature of the things, the issues and their formulations in the address, are intermingled with the abstract thought behind them. It therefore, seems proper to briefly touch the main issues and follow them up with the political philosophy which prevailed in the Consembly and was finally projected in its handiwork, the Constitution.

Among the main issues, were the future of the ruling dynasty, the accession of the State to the Indian Union, the question of compensation to the expropriated land owners, the degree of cultural autonomy to the various territorial units of the State, fundamental rights, independence of Judiciary and the rule of Law together with the values contained in the concept of socio-economic justice.

As for the ruling dynasty, the Institution of monarchy was pronounced to be incompatible with the spirit and need of modern times and it was desired that the Constitutional head of the State should be chosen by the State Assembly to perform certain functions which may be entrusted to him under the Constitution[32].

In respect of the State's accession, the address examines the pros and cons of three options opens to the Assembly, namely, accession to India,

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accession to Pakistan and an independent status, making the State as a kind of Switzerland of the East.

A perusal of the address indicates that Sheikh Abdullah (and his party) was considerably influenced by the liberal, democratic traditions of the west, which, incidentally, had also influenced the making of the Indian Constitution. The party also subscribed to certain socialistic values and concepts such as that of socio-economic justice. The "land to the tiller" without compensation to the land owners for the land of which they were expropriated is, in fact, reminiscent of a Marxist norm. It seems that the two mains streams of the western liberal political traditions and the socialism slightly coloured by the Marxist traditions, both clamour for attention on the part of the party, its leaders and the Assembly. The result was a kind of a 'mix' of the two traditions, two different ways of life, a kind of amalgam of the values belonging to each tradition.

And, so, as the two philosophies or ideologies vied with each other to capture the leaders' mind, the State Constituent Assembly was finally asked to incorporate democratic socialism, somewhat in the way as the Indian Constituent Assembly had done with reference to the Constitution hammered into shape by it. The State Assembly's final option in favour of no compensation to the land owners in the larger context of the "land to the tillers", was a sort of a pinch of salt or spice thrown into the cauldron of the new polity, in which what was mainly cooking up was a sort of democratic socialism. To reiterate, the philosophy which largely animated the framing of the Constitution in Jammu and Kashmir State was that of democratic socialism.

The functions which the Constituent Assembly had been called upon to perform were :

(*i*) To decide constitution for the future governance of the country[33]

(*ii*) To decide the future of the ruling dynasty[34] ;

(*iii*) To decide whether or not compensation should be paid to the landlord[35] ;

(*iv*) To declare its conclusion regarding accession[36].

So far as the future Constitution of the State was concerned, Sheikh Abdullah stressed that it should be based on the principles of equality, liberty and social justice, which were the integral features of all progressive constitutions of the world. The rule of law, equality before law and the independence of judiciary should be the cornerstones of the political structure. He further added that the freedom of individual in the matter of speech, movement, association, press and opinion as well as rapid economic

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development and more equitable distribution of national wealth as given in "New Kashmir" should be guaranteed. He pleaded that full consideration should be given to the existence of various sub-national groups in the State as well as basic unity of the State. The future constitution, according to him, must afford the fullest possibilities to each of these groups to grow and flourish in conformity with their cultural characteristics, without detriment to the integral unity of the state or the requirements of our social and economic policies[37].

While referring to the future of the Ruling Dynasty, Sheikh Abdullah traced out briefly the events which led to the conclusion of the Treaty of Amritsar 1846 and the transfer of the people and the territory for 75 lakhs of rupees to Maharaja Gulab Singh. He also referred to the suppression coming in the wake of the Dogra rule afterwards. With the withdrawal of the paramount power, he pointed out, the rights of the Indian Princes had ceased and sovereignty had reverted to the people. He stressed that National Conference was convinced that the institution of monarchy was incompatible with the spirit and need of modern times and a constitutional head of the state would have to be chosen to exercise the functions the assembly might choose to entrust to him[38].

In order to decide whether or not compensation should be paid to the expropriated and lords, Sheikh Abdullah traced out briefly the history of landlordism in Kashmir from Great Moghulsdays down to the Dogra dynasty. He referred to the "land to the tiller" policy of the National Conference as envisaged in the 'New Kashmir'[39].

As regards the State's accession Sheikh Abdullah referred to the three possible alternatives with their pros and cons. These were as under:

(*a*) Accession with the Union of India;

(*b*) Accession Pakistan; and

(*c*) Making Kashmir an Eastern Switzerland *i.e.* Independent Kashmir.

While explaining the merits of the State's accession with India he mentioned the kinship of ideals between the two States; the support of the Indian National Congress to the cause of State's people's freedom; the steps towards democratisation, social reconstruction; justice, freedom, equality for all; guarantee of equality of rights to all citizens (irrespective of their religion, colour, caste and class) and secularism- as the main basis of the Indian Constitution. He pleaded that these features of Indian polity would conduce to the security of the Kashmiri Muslims in India. He pointed out that even the economic interests of the people demanded the accession of the state with India-as land reforms cold only be possible in India and not in landlord ridden Pakistan with so many feudal privileges intact. More industrialised than feudal

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Pakistan, according to him, India could help the state to exploit the mineral resources and the raw material in which Kashmir was very rich. The essential commodities could be got in large quantities from India. He further added that as their economic welfare was bound with their arts and crafts, the traditional markets for these precious goods were located in India[40].

Referring to the second alternative and argument that as Pakistan was a Muslim state and Kashmir being Muslim majority state, must accede to Pakistan, Sheikh Abdullah pointed out that Pakistan's claims as a Muslim State were only a camouflage, a smoke screen to dupe the common man and an appeal to the religious sentiment. According to him Pakistan was not an organic unity of all muslims in this subcontinent and was a feudal state where majority of the population was still helpless under the heels of their rulers and were not guaranteed even the fundamental rights through a democratic constitution. He pointed out the fact that, in Pakistan, the right of self-determination was then being denied and those who had fought against imperialism were suppressed. He further stressed that religious affinities did not and should not alone normally determine the political alliances of the states and that is why there was no Christian block, Buddhist block or even Muslim block in modern international politics. Reiterating the economic interests and community of political ideals between the state and the Union of India, Sheikh Abdullah said that these days economic interests and community of ideals more appropriately influenced the policies of the States[41].

While referring to the third alternative i.e. the independence of the state, he pointed out the practical difficulties involved therein. Firstly, it was not easy to protect sovereignty, and independence in a small country which had not sufficient strength to defend it and its long and difficult frontiers bordering with so many countries. Secondly under the circumstances it was a must for the people of the state to be assured of the good will of all their neighbours. Addressing the Consembly, he reminded the members of the fact that despite the existence of a standstill agreement between independent state of J&K and Pakistan during the period August 15 to October 22,1947, the state had been invaded by Pakistan and "where was the guarantee that in future it might not be the victim of a similar aggression"[42].

Sheikh Mohd. Abdullah concluded his historic statement with the stress that the House must consider the question of accession with open mind, and not let their personal prejudices stand in the way of a balance judgement. He stressed upon the Assembly to weigh all these in the scales of their national good and to pronounce where the true well being of the country lay in future[43]. So far as constitution-making function. Of the constituted Assembly was concerned, Sheikh Abdullah's policy statement on Monday i.e. 5th November,

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1951 clearly indicated what the Constitution would not include. The issues of acession, the ruling dynasty's future and compensation for dispossessed landlords would be settled through the resolution[44].

A careful analysis of this important declaratory document reveals several facts which stand out prominently.

First, it traced out briefly the history of the struggle for freedom in Kashmir and its prople's fight against tyranny and oppression of Dogra dynastic rule.

Secondly, declaration proclaimed that after centuries, the only elected representatives of the people the state assembled there to shape the future of their country and stressed that they were the sovereign authority in the state and the constitutent assembly had become the repository of its sovereign authority. What ever it would decide, would have the irrevocable force of law.

Thirdly, it reminded the members that their main task would be to devise the constitution for the future of the state and no person and power could stand between them and the fulfilment of their that historic task i.e. to shape their aspirations and to give substance to the ideals of the "New Kashmir" in reality for which they had so long struggled.

Fourthly, while refering the Constitution of India which has provided for a federal union but in distribution of sovereign power treated Jammu and Kashmir differently from its other constituent units, the Declaration pointed out that with the expection of the items grouped under Defence, Foreign Afrfairs and Communication in the Instrument of Accession. The people of the State had complete freedom to frame their own constitution in the manner they liked. This right had been given to Kashmiris in order to live and prosper as good partners in a common endeavour for the advancement of their people.

Fiftly, it referred to some of the broad aspects of the constitution which should be in the future constitution of the state. It specifically pronounced that the consembly should create a frame work of law and order, duties and rights of the citizens, equal treatment to men of all castes, creed and humanity, rapid economic development of the staste; safeguard their political freedom and democratic rights of citizens in solemn terms and guarantee them economic and social justice as well as a just social order.

The constitution would, thus, be based upon the principles of equality, liberty and social justice, the rule of law; equality before law and independence of judiciary from the influence of executive; the freedom of individual in the matter of speech, movement and association, press and public opinion and the rights and obligations already embodied in 'New Kashmir' and which were the integral parts of a democracy as well as have been defined as an

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apparatus of social organization wherein people govern through their chosen representatives and are themselves guaranteed political and civic liberties.

Sixtyly, while recognising the heterogenious character of Jammu and Kashmir, the declaration stressed that in future constitution, the powers and privileges should not be concentrated in the hands of any particular group or territorial region. Rather it must afford the fullest possibilities of each of the cultural groups to grow and flourish without deterament to the integral unity of the state.

Lastly, the declaration pronounced the main functions that the consembly would be called upon to perform in addition to devise a constitution. As said earlier, these were:

(*a*) To decide the future of the ruling dynasty ;

(*b*) To decide whether or not compensation should be paid to expropriated land lords; and

(*c*) To declare its conclusion regarding accession of the state.

The Declaration of objectives was, however, said to be defective in two respects. Unlike India, where congress working committee appointed the expert committee in July 1946 under the chairmanship of Pt. J.L.Nehru to lay down, among other things, the objectives of the forthcoming constitution, no such committee of experts has been appointed by the All Jammu and Kashmir National Conference under the chairmanship of the then Prime Minister Sheikh Mohammad Abdullah to formulate the objectives of the forthcoming constitution of the Jammu and Kashmir state. Secondly, the integrationists at the centre and the state took a strong exception to the sovereign character of Kashmir Consembly and pointed out that the Kashmir Constituent Assembly was not a sovereign body, for Article 370 of Indian Constitution had given it powers to transfer more subjects to the centre but not to curtail the three ceded subjects or to decide in favour of secession or altering the basic structure of a princely state.

Inspite of it all, the fact, however, remains that the Declaration of Objective had a historical significance of its own and will ever be remembered by posterity.

REFERENCES

1. The Hindu, Madras dated 29.10.1951.
2. The Hindu, Madras dated 1.11.1951.
3. Ibid,
4. Ibid.
5. Ibid.
6. The Hindu, Madras dated 2.11.1951

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7. The Hindu, Madras dated 1.11.1951.
8. Ibid.
9. The Hindu, Madras dated 2.11.1951.
10. Ibid.
11. Ibid.
12. The Hindu, Madras dated 2.11.1951.
13. Ibid.
14. The Hindu, Madras dated October 24,1951:
"An important cabinet meeting, under the Presidentship of Sheikh Mohd. Abdullah, held in Srinagar on October 23,1951. It was understood after the meeting that on the first day, after completing the preliminary formalities, the olest member of the Assembly would be elected as its temporary Chairman".
15. The HIndu, Madras, 29.10.1951.
"Detail of the procedure to be followed at the inaugural and the subsequent days of the Consembly session had been worked out by the State's constitutional Adviser Justice M.A.Shahmiri. It was decided that broadly the Assembly would follow the procedure adopted by Indian Constituent Assembly in the initial stages for the purpose of electing the temporary Chairman and the panel of committeees with the task of evolving a suitable machinery for the conduct of the day to day business of the House".
16. the Hindu, Madras dated 31.10.1951.
"A meeting of the Working Committee of National Committee which held in the evening of October 30,1951 under the Presidentship of Sheikh Mohd. Abdullah decided to set up Maulana Mohd Sayeed Masoodi for temporary Chairmanship of the Consembly, presumably on the ground that he was the oldest member of the House, and Mr. G.M.Sadiq for its permanent Presidentship".
17. Constituent Assembly Debate Vol.I No.1 October 31,1951.p.1.
18. Ibid.
19. Ibid, Pp 14-19 and J&K CA Debate Vol.1 NO.2 dated November 1951, pp 1-2.
These messages were from President of the Indian Union; Sh. Yuvaraj Karan Singh, Shree Mauvalankar Speaker of Indian Parliament; Pt. J.L.Nehru, c.Rajagopalacharya; N.Gopalaswami; S.Baldev Singh; K.M.Munshi; Ajit Prashad Jain, His Excellency Maharaja of Bhavnagar-Governor of Madras, His Ex. Raaja Maharaj Singh, Governor of Bombay; His Excellency, Governor of U.P.; His Excellency, Government of PUnjab; His Excellency, Government of Bihar; His Excellency Governor of Orissa, His Excellency, Governor of M.P; Chief Minister of Madras, Chief Minister of Bombay; Chief Minister of Bihar; Chief Minister of Assam; Speaker of West Bengal Assembly, Speaker of Bombay Legislative Assembly; Speaker of

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U.P.Assemnly;Speaker of Bihar Assembly and Speaker of Orisa Assembly etc. etc.

20. For detail speech see J&K Cosntituent assembly debate Vol. 1 No. 1 dated October 31, 1951 pp 2-6.
21. The J&KJ Constituent Assembly Debate Vol. 2 No.2 dated November 1, 1951, p.3.
22. Ibid, p.3.
23. Constituent Assembly Debate Vol. 1 No.2 1951, pp 3-5.
24. Ibid.
25. Robvert G.Dixon and Elmer Plischkle, American Government Basic Documents and Materials, D.Van Nostrand Company, Inc., Princeton, New Jersy, February 1952, p.6.
26. "Documents of Major Foreign Powers" edited by Loiuse W.Holborn, John H.Herzy and Gwendolen M.Carter, p.90, Harcourt, Brace and World, Inc. New York/Chicago/San Francisco/Atlanta, 1968.
27. While addressing the National Conference Convention held in 1948 Sheikh Mohd. Abdullah said "New Kashmir undoubtedly transcends all barriers of race, religion, colour and economic inequality. It aims at the total exterminationof social parasitism and liquidation of exploiters. A dynamic programme like this even which as its immediate objective has the emancipation of common man from the shackles that bind him today cannot surely live in an atmosphere of hate and the narrow limits of reactionary feudalism". (Jammu and KashmirNational Conferene 21st Annual Session-Political Resolutions published by Abdul Rashid, General Secretary, All Jammu and Kashmir National Conference (Camp), Jammu, year unknown, p.3)
28. New Kashmir Opcit. p.12.
29. Proclamation Shriman Inder Mohinder Raj Rajeshwar Maharaja Adhiraj Shri Hari Singh the ruler of Jammu and Kashmir and dependencies, Jammu, March 5,1948.
30. Tewari, Umakant in his book the Making of Indian Constitution Ocit. p.70 mentioned that the Congress Working Committee appointed the Exper Committee in July 1946 under the Chairmanship of Pt. J.L.Nehru to lay down, among other things, the objectives of the forthcoming Constitution, but no such committee was formed to formulate the objectives of forthcoming Constitution of The Jammu Kashmir state.
31. (*i*) C.A.Deb. Vol.1 No.3 dated November 1951, p.1.
(*ii*) Sheikh Mohd. Abdullah in his policy statement ponted out that Consembly had been the repository of its Sovereign authority. While referring to its members he said, "you are the sovereign authority in this stte of Jamu and Kashmir. In support he quoted Art. 3 of the French Constitution-"the source of all sovereignty resides

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fundamentally in the nation...Sovereignty is one and inddivisible, inalienable and imprescriptable. It belongs to the nation.

He concluded with the words "we should be clear about the responsibilities that this power invests us with..." N.Chanda in an article "Kashmir True Constitutional Eyes" published in Organiser on 2.6.1952 took a strong exception to the sovereign character of Kshmir Consembly and pointed out that "...other Princely states also thus acceded with larger powers than hose of the provinces, but later they agreed to be put on par with them except in the minor matter of retaining princes as constitutional desirable alignment of Kashmir with the provinces was left by Art. 370(2) of the Indian Constitution to the proposed C.A. of the Kashmir, the intention being to havxe it done by popular consent. The Kashmir C.A. thus is not a sovereign body, for Art. 370 gives it power to transfer more subjects to the Centre, but no to curtail the three ceded subjects or to decide in favour of secession or altering the basic structure of a princely state.

32. C.A.Deb Vol.1 No. 3 dated November 5,1951, p.6-12.
33. C.A.Deb, Vol. 1 No.3 dated November 5, 1951, p.3.
34. Ibid. p.4.
35. Ibid, p.4.
36. Ibid, p.4.
37. Ibid, pp.3-6.
38. Ibid, pp.6-12.
39. Ibid, pp.12-15.
40. Ibid, pp 22-24.
41. Ibid, pp 24-26.
42. Ibid, p.26.
43. Ibid, p.26.
44. The Statesman, New Delhi dated 8.11.1951.

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5

APPOINTMENT OF THE COMMITTEES AND THEIR TERMS OF REFERENCE

The Constituent Assembly proceeded, as it ought to have, in framing the Jammu and Kashmir's Constitution by first appointing several committees, which were under two heads: Procedural Committees and Special Committees. As the names indicate, procedural committees were meant to look after the routine work of the Consembly and to make suggestions in this regard and the special committees were meant to assist the members of the Consembly in the formation of the Constitution itself. Several special committees, were therefore, appointed concerning the various aspects of the constitution and they were required to submit their reports which were discussed by the whole house and adopted after dispensing of various amendments. The recommendations of the various committees as accepted by the Constituent Assembly constituted the basic principles on which was based the Draft Constitution which was prepared in the Secretariat of the Constituent Assembly, and which after being scrutinized by the Drafting Committee, was submitted to the Constituent Assembly for adoption.

5.1. Procedural Committees

The Procedural Committees came first into existence because of their importance in the day-to-day working of the Consembly. Most of these Committees were appointed in the very first session of the House. The first to be appointed among the procedural committees was the Committee on Rules of Procedure. Other committees of this category soon followed in its wake.

5.1.1. Committee on Rules of Procedure and its Report

Rules of procedure are the first necessity for a smooth and orderly working of a body, but they cannot be framed in a day. So for the interim period between the meeting of the Consembly and the report of the committee- the House accepted the resolution moved by G.M.Sadiq and seconded by G.L.Dogra containing the Provisional Rules of Procedure[1]

Immediately after the election of G.M.Sadiq as the permanent President of the Constituent Assembly and the congratulatory speeches Mirza M.A.Beg moved a resolution for the formation of a committee to frame Rules of Procedure for the Assembly. It was to report on the:

(*a*) Rules of procedure of the Constituent Assembly.

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(*b*) Powers of the President of the Assembly.

(*c*) Organisation of the work of the Assembly including the appointment and powers of office bearers other than the President.

(*d*) Procedure for the declaration and filling of vacancies in the Assembly[2].

The Committee might co-opt any personas an expert to render such assistance in its work as might be required; and it had to submit its report to the President within three months. Mr. S.L.Saraf seconded the resolution. Maulana Mohd. Sayed moved two amendments[3]. Firstly, that the world Vice-President[4] be added in Part C of item 1. According to him the vice President was also to be elected and the authority of his appointment ought to be vested in the House only. Secondly that Mr. Mubarak Shah be substituted for Mr. Kulbir Singh as the latter had no legal knowledge and therefore did not fulfil the conditions which the mover intended. But no members had come forward to second the amendments. After discussion he withdrew his amendments. Kh. Mubarak Shah raised a point of order and pointed out that the resolution moved by M.A.Beg was not in order and that the Assembly might pass on to the business next in order and that the resolution be postponed till the next meeting of the Assembly. He also objected to the inclusion of the name of Secretary to the Constituent Assembly (to act as ex-Officio Secretary to the Committee) as the notice of that resolution did not include the Secretary. He pointed out that on the perusal of rule 13[5] it would be evident that no business, not included in the order of the day could be discussed without the leave of the President. Secondly, he objected to the resolution on the grounds of rule 27[6]-the question was substantially identical with the one on which the Assembly had already given its decision. Thirdly he objected to the resolution as notice thereof had not been given to the Members before the commencement of the business of the Assembly. He was of the opinion that moving of such a resolution was a clear violation of rule 46[7] unless the President in exercise of his powers suspended that rule. The President pointed out that the rule had been suspended before the motion was moved and hence the objection of the member was out of order. Mr. D.P.Dhar moved another amendment that as he would not be available for the next two months, as such Mr. G.L.Dogra might be appointed in his place. It was accepted by the House. The resolution moved by Mirza M.A.Beg in regard to the appointment of a Committee on Rules of Procedure and other matters as amended by the House was then put to the House and adopted unanimously[8].

The Committee in its first meeting appointed a sub-Committee[9] and directed that the draft of the rules be framed by Pt. Hiranand Raina, Secretary and L.Pishori Lal Gupta, Joint Secretary of the Constituent Assembly under

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the guidance of the Constitutional Adviser. The draft prepared by the sub-Committee was discussed at the various meetings of the Committee in camera, which after careful consideration and detailed discussion framed the final draft.

The report of the Committee, however, was presented to the House on 24 March, 1952 but it was discussed on 25th march, 1952. Maulana Mohammed Sayed objected to the presentation of Rules in form of an act and suggested that after the discussion on the report the Rules of Procedure be presented in the form of a regular bill[10]. The President said that the point of order raised was not valid and drew attention of the House to rule No. 24[11] and rule No. 29[12].Mr. Abdul Gani Goni pointed out that as the rules of procedure were yet to be considered the procedure had to be governed by rule 25 of the provisional rules. The President pointed out that rule 25 did not deal with it. He further said that there was an amendment in the name of Kh. Ghulam Rasool Kar but he did not want to move it. Maulana Mohd. Sayed wanted to know the amendment. The President said that when it had been withdrawn by the members, there was no need of reading it in the House. Clause 3 of Section 15 regarding the appointment of a Constitutional Adviser, sparked off a controversy in which as many as 11 (eleven) members took part.

This clause ran as follows:

The Constitutional Adviser of the State shall act as the Constitutional Adviser of the Assembly and the Advisory Branch shall work under him[13].

Maulvi Mohammed Anwar Shah moved an amendment that for the words "The Constitutional Adviser of the Government shall work as Constitutional adviser to the Constituent Assembly", the words "On the advice of the Constituent Assembly the President shall appoint a special expert as Constitutional adviser to this Assembly on such salary as may be approved by the Finance Committee", may be substituted.

While moving the amendment he pointed out that if the Constitutional Adviser was not directly under the President of the Constituent Assembly, he could at any time give such a counsel as might not be in the interests of the people. He admitted that the adviser was a scholar and an expert who possessed all those qualities which were needed for such a high office, but still it was not considered expedient that a Government Adviser should tender his counsel to such a high institution[14]. Kh. Noor-ud-Din Sufi supported the amendment and submitted that a Government Adviser could not perform the functions of an independent adviser[15]. Mr. Mir Qasim opposed the amendment and submitted that a clash of opinion between the Constitutional Adviser and the House was a remote possibility as in the House [illegible] under the

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control of the President of the Consembly. Moreover, the President could over rule the counsel given by the Constitutional Adviser whenever he deemed fit. The removal of the Constitutional adviser from office or appointment of a new one also wholly lay in the competence of the President. He again pointed out that honourable members of the House had a right to accept or reject the counsel[16]. Mr. G.L.Dogra while analysing the amendment saw a remote possibility of any conflict as the Head of the Government and the leader of the House were one and the same person who would always keep in view the wishes of the House. The 'present' adviser was also a judge of the High Court and as such enjoyed a special position. Direct or indirect pressure could not be brought to bear upon his independent judgement[17].

Maulana Mohammed Sayed supported the amendment. He said that in the event of a conflict between the Government and the Constituent Assembly, it would create an embarrassing position for the Constitutional Adviser. The very idea of a Government servant being an Adviser to the Sovereign and independent body was incompatible[18].

Mr. Ghulam Rasool Kar supporting the amendment argued that while the amendment was being debated, "Government Constitutional Adviser" was sitting on the dais besides the President, without having been permitted either by the House or by the President. And a sort of interference was caused in the business of the House whenever he gave any counsel[19].

Mr. Krishan Dev Sethi supporting the amendment feared that the powers of the sovereign body might get curtailed by the counsels of the Government Adviser[20].

Mr. Mubarak Shah considered the amendment as totally impracticable[21]. He argued that the Constitutional Adviser would not become a member of the House. His position would be that of any other employee of the Constituent Assembly. The leader of the House, Sheikh Mohd. Abdullah, rose to dispel the fears expressed by some members. He assured the House that with their full support and confidence he was enjoying the position of the Head of the Government, also. The Constituent Assembly being a sovereign body had full powers to keep or change the present Government. Similarly it could outrightly reject the advice of the Constitutional Adviser, if found unacceptable to it. The Government had only offered the services of an expert and the President had accepted the offer. Since then he had given useful advice on various constitutional issues. The President had full powers to relieve the Constitutional Adviser if his services were no longer required[22].

Mr. M.A.Beg was of the opinion that the opinion of the Constitutional adviser should be above any doubt or aspersion, holding as he was the high office of a Judge of the High Court. The Constituent Assembly's powers would remain unimpaired[23].

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The mover, Maulvi Mohd. Anwar Shah Masoodi withdrew his resolution on the assurance of the President that he would reject any counsel of the Constitutional Adviser which was not acceptable[24].

Sardar Harbans Singh Azad moved an amendment regarding Clause 5, Section 7[25] and said that when vote was taken on filling of a vacancy and it resulted in a tie, instead of drawing lots, the Deputy President ought to have the right to a casting vote. In that way the need of drawing lots would not arise. The President said that was not a substantive amendment. Mirza M.A.Beg explained the amendment saying that Mr. Azad proposed that instead of lots the voting could be held afresh. If again the two candidates obtained an equal number of votes then Deputy President could also vote. He pointed out that the point at issue was whether he could exercise his vote or not. He could exercise vote in the election of the President and at no time had he been deprived of his right[26]. As such envincing the amendment to be impracticable he requested the mover to withdraw the same. So the amendment was withdrawn. Sardar Harbans Singh Azad moved his second amendment pertaining to rule 23[27] and said that the words "a copy thereof shall be supplied for the use of any member" be followed by the words "one clear day". In support of that amendment he pointed out that it had been found that the members got copies of amendments just when they were to be moved and in that way the business of the House suffered. If it was done one clear day earlier, the members could consult rules and do a lot of thinking too. Mr. M.A.Beg said that it had been already provided in clause 4 of Section 25[28] and that difficulty could be removed after adoption of the rules. So the amendment was ultimately withdrawn.

The President then put the report to the House, and thus Mirza M.A. Beg's motion and the recommendations of the Select Committee regarding Rules of Business and Procedure were adopted unanimously[29].

5.1.2. Finance Committee

On November 5,1951 Mr. D.P.Dhar moved the resolution that a Finance Committee be appointed for the duration of the Assembly[30]. Pt. Sham Lal Saraf seconded the resolution. The function of the Committee were as under:

(*a*) to advise the President regarding the posts to be created in the Assembly and the salaries and emoluments to be attached thereto,

(*b*) to recommend to the Assembly the allowances to be paid to the officers and members of the Assembly and its committees, and

(*c*) to frame budget or supplementary budget for submission to the Assembly[31]

The mover proposed the names of the members of the Committee[32].

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The Committee might co-opt any person as an expert to render such assistance in its work as might be required. Kh. Ghulam Mohi-ud-Din Hamadani wanted to make a slight change with regard to item (a) of para 1 of the resolution *i.e.* in place of "President shall be ex-officio Chairman", might be substituted "some other member may be proposed as Chairman"[33]. But Mr. Mirza Mohd Afzal Beg opposed the amendment which, according to his, was vague. The President, pointed out that the amendment had been neither seconded nor a prior notice thereof had been given by the mover. Hence the amendment could not be moved. Mr. Mubarak Shah wanted an amendment into clause 2 that the powers of the Committee might be restricted to the framing of the budget or supplementary budget only[34]. Mr. Mohd. Afzal Beg opposed it as again no prior notice had been given for such an amendment. Maulana Mohd. Sayed pointed out that it was within the competence of the Hon'ble President if he so desired to allow the amendment even without notice; but that it was necessary to make a request for the same. The President said that the clause in regard to the notice for amendment could be suspended under special circumstances. But as he had already stated that the list of business for the day was made available to the Hon'ble members before the commencement of the day's session, so they could have easily given prior notice for moving the amendment. He further added that even if the notice had not been given atleast intimation in regard to moving of an amendment could have easily been given before the commencement of the day's proceedings. Hence his ruling was that as neither a prior notice nor any information regarding that amendment had been received, that amendment could not be moved[35]. Mr. Mubarak Shah wanted to say something but the President pointed out that after his ruling it would be sheer waste of time of the House to have any further discussion on the subject. The resolution was then put to the House and adopted[36].

5.1.3. Steering Committee

On 5th November, 1951 Mr. M.A.Beg moved a resolution for the appointment of Steering Committee for the duration of the Assembly with the following functions :

(*a*) to arrange the order of business for the day;

(*b*) group similar motions and amendments and secure, if possible assent of members concerned to composite motions and amendments;

(*c*) to act as a general liaison body between the President and any party of the Assembly; and

(*d*) to deal with any other matter under the rules or referred to it by the Assembly or the President[37].

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Mr. Moti Ram Beigra seconded the resolution. Maulana Sayed requested the mover to make his speech in support of the resolution in Urdu because most of the members did not know English. Mr. M.A.Beg proposed the appointment of a Steering Committee consisting of four members[38] for the duration of the Assembly and its functions. He added that the function of the proposed committee should also be to act as general liaison body between the President and any party of the Assembly and to deal with any other matter under any rules or referred to it by the Assembly or the President. He said that since the House was in its inception and had no precedent to follow, it was necessary to have the proposed Committee so that the business to be brought before the House might come before it in a presentable form. It was just possible that there might be different amendments, for the disposal whereof it might be necessary to consider them outside the House and thus adjust the conflicting view points and then give them a legal shape and put them before the House. Kh. Mubarak Shah pointed out that under rule 14 of the Business and Procedure the proper notice of the resolution was not given. The President over ruled his objection on the grounds that the members had been notified and if he failed to receive the notice it must have been owing to his failure to communicate his postal address for the despatch of the same and hence the resolution was in order[39]. S. Harbans Singh Azad said that he received a copy of the business at 7 O'clock on 5th November (the very day of business) and was therefore not able to give a prior notice for an amendment. Mr. D.P.Dhar wanted that S.Harbans Singh Azad be given permission to move any amendment but President's ruling was that as the notice to move amendment had not been given even by that morning hence such permission by relaxing the rule could not be given. The resolution was then put to the House and adopted unanimously[40].

5.2. Special Committees

As soon as the work of framing of the procedural committees was completed, attention was immediately paid to set up special committees.

5.2.1. Committee to Examine the Desirability or Otherwise of the Payment of the Compensation for Lands Expropriated under the Provisions of Big Landed Estates Abolition Act

Section 26 of the Big Landed Estates Abolition Act, S.2007; provided that the question of compensation with respect to the expropriated land shall be settled by the Constituent Assembly[41]

The Land Compensation Committee, however, had nothing to do with the making of the Constitution, hence it is not discussed in detail.

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5.2.2. Advisory Committee Regarding Fundamental Rights and Citizenship.

On 7th November, 1951 Mirza M.A.Beg moved a resolution that:

1. An advisory Committee regarding fundamental rights and citizenship be appointed;

2. That the Committee should make recommendations as regards the qualifications necessary for the State citizenship and the fundamental rights of the citizens of the State. In making the recommendations, the Committee should keep in view the definition of the State-Subject as contained in Notification No. I-L/84 dated the 20th April, 1927.

3. That the Committee might invite any other person to take part in its deliberations;

4. That the Quorum for the Committee should be one-third of the total number of members of the Committee for the time being; and

5. That the Committee should submit its report to the Assembly within four months from this date[42].

Before making a speech on the merits of the Resolution, Mirza M.A.Beg moved an amendment with regard to the personnel of the Committee for which he had given no prior notice that morning. He requested that his notice might be admitted and proposed that in clause 1 sub clause (*b*)[43] instead of the names of Mr. Mir Qasim and Mr. Assad Ullah, the names of Kh. Abdul Gani Trali and Mr. Habibullah of Sopore be substituted. But the President declined the request. So far as the deletion or addition of two members was concerned, the President pointed out that the mover, if he liked, could do so even otherwise as the motion embodied :"that the Committee may invite any person to take part in the deliberations". Mr. Mir Qasim and Mr. Assad Ullah Mir voluntarily withdrew their names with the permission of the House, thus yielding their places to Mr. Habibullah and Mr. Abdul Gani Trali, Mr. M.A.Beg, while speaking on the desired nature of fundamental rights to be incorporated in the State Constitution as deriving their character from similar rights guaranteed in advanced democracies of the world, and functions of the Committee appointed for the purpose of framing such rights and principles of citizenship, drew attention to the desirability of Indian citizenship and the State-Subject[44]. The notice was supported from different corners of the House, Mr. Mir Qasim, while supporting the resolution, pointed out that "the law defines the right but that it is a task of utmost importance to secure and enforce that right by solid means"[45]. Mr. Assad Ullah Mir quoted Rousseau "will and not force is the basis of the State", and said that it was only public opinion which was the basis of responsible Government. While explaining

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the distinction between personal will, group will and general will, he said that if all 'wills' were systematised into a collective shape they would form the basis of any democratic government that would constitute an organisation in which the voice of the oppressed could not be suppressed and neither the voice of such a man could prove harmful to the public[46]. Mr. Ghulam Nabi Wani wanted that for the consideration of the civil rights it was necessary to keep under consideration the backwardness of the public[47]. S. Harbans Singh Azad was of the view that the fundamental rights and the civil obligations could not be divorced from each other. While defining freedom he pointed out that the real object of the definition as it struck him was that the freedom of any one should not come into conflict with that of any one else and similarly the freedom of writing, speech or profession should not interfere with that of any other person[48]. While replying to the debate Mirza M.A.Beg reminded the members that the question of fundamental rights has been the main reason for which they had been struggling hard during the last twenty years under the able and inspiring leadership of Sher-i-Kashmir and had suffered troubles and tribulations. He assured the House that the foundations of their constitution would absolutely be non religious and of a secular character which any civilized country might feel proud of[49]. He, thus, begged the House that the resolution, as amended, be passed. The President inquired whether any member of the House had any objection to the amendment proposed by the mover. The reply was in negative[50]. The President then put the amended resolution to the House which was adopted[51].

5.2.3. Basic Principles Committee

On 7th November, 1951 Sheikh Mohd Abdullah moved the resolution standing against his name and said, the Assembly may resolve[52]:

"1. that a Basic Principles Committee be appointed;

2. that the Committee evolve Basic Principles for framing a Constitution for the State keeping in view the broad outline of his statement made in the Assembly on 5th November, 1951[53];

3. that committee might invite any other person to take part in its deliberations;

4. that the Chairman might delegate his functions to any other member of the Committee during his absence;

5. that the quorum of the Committee be one third of the total number of the Committee for the time being; and

6. that the Committee will submit its report to the Assembly within four months from this date."

Sheikh Mohd. Abdullah pointed out that he had already indicated in his

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statement of the 5th November, 1951, the aims and objectives and other principles which should guide them while framing the Constitution of Jammu and Kashmir State. He added that the organisation to which they belonged (National Conference) had laid down the basic principles for future constitution in a booklet named "New Kashmir". He remained the members of the House and particularly those whom he had proposed on that Committee to fully keep in view the inspiring words contained in the 'New Kashmir'[54]. He quoted the lines of his 5th November statement and said that they should naturally be guided by the highest principles of the Democratic Constitutions of the world. They should base their work on the principles of equality, liberty and social justice which were the integral features of all progressive Constitutions. He pointed out that he had tried his best to draw the best talent that the House could give him in order that those members might study various constitutions of the world and then put before that House suitable suggestions so that the House might appoint a Drafting Committee which would take fullest advantage of the labours of that Committee. He said that he had also tried that Committee might have the guidance of all the important element belonging to the country so that the principles which that Committee might lay down for the Drafting Committee might be acceptable to the entire country[55]. Maulana Mohd. Sayed Masoodi supported the resolution and said that the Committee was the most important of all Committees so far constituted and the work of the constitution framing would depend on the work of that Committee. He added that the Committee[56] was constituted of not only the best talent of the House but also the ablest personalities produced by Jammu and Kashmir State during the course of last 20 years[57]. He was confident that their Constitution would be framed on these fundamentals and would be free from all the defects from which a modern Constitution should be. He hoped that in its report the Committee[58] would take stock of the picture impressed upon the public mind by the Qaid-i-Azam (Sheikh Abdullah) and National Conference during the course of over 20 years' struggle and thus fulfil all the longings and aspirations that had been generated in the public mind. The resolution was then put to the House and adopted unamimously[59].

5.2.4 Emblem Committee

On 31st March, 1952 Sheikh Mohd. Abdullah moved a resolution to authorise the President of the Constitution Assembly to appoint a Committee[60] that would examine the question of the emblem for the State Flag and submit its report along with the sample of the design before the House in the next Session of the Assembiy. He further said that the best emblem would be one, that belonged to no community, religion or caste in particular and was loved

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by all and sundry. He praised the emblem of 'Plough' on National Conference Flag and said that the biggest section of the world population worked with the plough. Plough should occupy the highest place in the world. As regards the future State emblem, he suggested the House a leaf of 'Chinar' with 'Plough' on its both sides and a balance in the middle. The symbol of the 'plough' was necessary because out of the total State population of 40 lakhs, 35 lakhs were connected with plough. The world famous Chinar that was an ornament of Kashmir represented her natural scenery and beauty. The balance would indicate that equity and justice would be maintained. But the President objected to this uninvited suggestive harangue at that stage which was calculated to direct or influence the Committee[61] in its objective and impartial choice. The resolution was then put to the House and adopted[62].

5.2.5. Drafting Committee

On 10th June,1952 Mirza M.A.Beg moved a resolution to appoint a Drafting Committee[63] for the purpose to :

1. Prepare a Draft Constitution for the State of Jammu and Kashmir in accordance with the directions given by that Assembly from time to time in the form of its resolutions or otherwise on the basis of the decisions taken by that House on the recommendations of the Basic Principles Committee and the Advisory Committee on fundamental rights and citizenship.

2. The Committee might co-opt any expert to render such assistance as might be required.

3. The presence of at least 3 members of the Committee (including Chairman) should constitute the quorum[64]

The President put the resolution to the House and it was adopted unanimously[65].

There were number of issues and controversies relating to appointment of various committees of the Consembly viz., criterion under which the members were nominated to various committees; to how many committees a member could be nominated and whether there were any substantial reasons for the exclusion of any member from any or all committees. An attempt has been made to get answers to all these questions from the then living members.

So far as the criteria were concerned, the individual responses varied and as many as thirty eight distinct categories of responses were listed. It would be meaningless and unscientific to deal with this data in such a fashion: more so when a research investigation was being conducted. Since these dimensions of the problem were sensed in the pre-testing of the schedule itself, the researcher decided to ask the respondents to specify the most predominant criterion. The classification of their responses was finally done

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according to the most predominant criteria noted against each respondent (Table) Those of the responses which could not be classified as per above were grouped under the category of "any other".

Table : 3

Criteria Under Which the Members were Nominated to Various Committees

S.No	Criteria	No. of Members	Percentage
1.	Attached equal weight[66] to all factors.	2	5.00
2	Expert Knowledge[67]	16	40.00
3.	Standing in party hierarchy[68]	2	5.00
4.	Personal influence[69] with leadership	9	22.00
5.	Personal preference	Nil	0.00
6.	Any other[70]	11	27.50
	Total	40	100.00

So far as the number of the committees, to which a person could be nominated was concerned the individual responses varied and as many as six distinct categories of responses were listed as shown in the following table:

Table : 4

Number of Committees to which a member could be nominated.

S.No.	No. of committees to which a member a member could be nominated	No. of Members	Percentage
1.	One	1	2.50
2.	Two	1	2.50
3.	Three	1	2.50
4.	No. Limit	30	75.00
5.	Limit but not in case of top leaders	1	2.50
6.	Do not know	6	15.00
	Total	40	100.00

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To the question, if there were any susbtantial reason for the exclusion of any member from any or all committees, the nine distinct categories of responses were listed as shown in the following table

Table : 5

Substantial Reason for the Exclusion of any member from any or all committees

S.No.	No. of Substantial Reasons for Exclusion	No. of Members	Percentage
1.	Lack of personal influence with the leadership	3	7.50
2.	Silence	1	2.50
3.	Lack of education	1	2.50
4.	Differences with the party leadership	2	5.00
5.	Failure to contribute	1	2.50
6.	Shia sectarianism in Kashmir	1	2.50
7.	Inadequate interest in the Assembly.	1	2.50
8.	No concrete reasons	21	52.50
9.	Professing ignorance of all above responses.	9	22.50
	Total	40	100.00

REFERENCES

1. C.A.Deb., Vol.1 No.1 p.14.
2. C.A.Deb., Vol.1 No.2 p.13.
3. Ibid, p.5.
4. Rao, B.Shiva: The framing of India's Constitution, Vol.1 The Indian Institute of Public Administration, New Delhi, 1966, p.444. The Rules of Procedure of C.A. of India ; Rules 10 to 14 dealt with office of the Vice-President. Rule 10 runs : "The Assembly shall have two Vice-Presidents who shall be elected by the Assembly from among its members in such manner as the President may prescribe.
5. C.A.Deb., Vol. 1 No.1, dated 31st Oct. 1951 appendix 'C' Rules of the Business and Procedure (Provisional) Sec. 13,p.30
6. Ibid, Sec. 27, p.34.
7. Ibid, Sec. 46, p.38.
8. C.A.Deb., Vol. 1No. 2 of Ist Nov., 1951, p.18. Name of the members of the Committee (vide C.A. Deb, Vol.1 No.2 p.14) were : 1.Mr. G.M.Sadiq (President of C.A._Chairman, 2. Mirza Mohd. Afzal Beg-Member, 3. Mr. G.L.Sdogra, 4. Mr. Ghulam Mohiud-Din

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Hamdani, 5. Mr. Chuni Lal, 6, Mr. Asad Ullah Mir, 7. Mr. Kulbir Singh 8. The Secretary, C.A. shall be the ex-officio Secretary of the Committee.

9. Name of the members of the Sub-Committee (vide Constituent Assembly Deb., Vol. II, No.1 dated 24th March, 1952, App. A. p.10):
   1. Mr. Mirza Mohd. Afzal Beg-Chairman,
   2. Mr. Ghalam Mohi-ud-Din Hamdani-Member.
   3. Mr. Kulbir Singh-Member.
   4. Mr. Hiranand Raina-Secretary.
10. C.A.Deb., Vol. II, No.2 dated 25th March, 1952, p.25.
11. C.A.Deb., Vol. II, No.1 dated 24th March, 1952 App. 'A' p.18 Rules of Business and Procedure Rule No.24 "the business of the Assembly shall be brought before for it or its committees by means of :
   (*a*) a motion;
   (*b*) a report of the committee;
   (*c*) an amendment to a motion or an amendment to an amendment.
12. C.A.Deb., Vol. II No.1 dated 24th March, 1952, App. 'A' p.19 Rules of Business of Procdure: Rule No. 29 "A member desiring to make any observations on any matter before the assembly shall only speak when called upon to do so by the Chairman and shall rise when he speaks, except as permitted by he Chairman. If, at any time, the Chairman rises, the members shall take his seat and cease speaking". (The clause "except as permitted by the Chairman", is not only superfluous but syntactically not fitting in the sentence).
13. C.A.Deb, Vol. II, No.1 dated 24th March, 1952, App.'A' p.15.
14. C.A. Deb., Vol. II No.2 dated 25th March, 1952 p.29.
15. Ibid, pp 29-30.
16. Ibid, pp 30-31.
17. C.A.Deb., Vol. II NO.2 dated 25th March, 1952 pp 31-33.
18. Ibid, p.33.
19. Ibid, p.34.
20. Ibid.
21. Ibid, p.36.
22. Ibid, pp 36-39.
23. Ibid, p.42.
24. Ibid, p.43.
25. C.A.Deb., Vol. II No.1 dated 24thg March, 1952 Appendix A. Rules of Business and Procedure Clause 5 of Sec. 7 p. 14 : "Where there are only two candidates for the election the candidate who obtains at the ballot the largest number of votes shall be declared elected, if they obtain an equal number of votes the election shall be by drawing of lots"
26. Ibid, p.45.
27. Ibid, p.18 Rules 23 Clause I :

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"A list of business for the day shall be prepared by the Secretary and a copy thereof shall be supplied for the use of every member before the commencement of the business for the day....".

28. Ibid, p.18 Rules No. 25 clause 4 : "Where five clear days notice of a motion has been given, the Secretary shall send a copy of the motion to the members atleast two days before the day on which it is to be moved ; and other cases, he shall send a copy to the as soon as possible after notice has been received".
29. C.A.Deb., Vol. 1 No.2 dated Ist November, 1951, p.18.
30. Like Indian Constituent Assembly the J&K Consembly too had been functioning as a Legislative Assembly whiledealing with matters the fell outside the ambit of Constitution making.
31. C.A.Deb., Vol. 1, No.3 dated 5th November, 1951, p.28.
32. The names of the members of the Assembly to be member of the committee (Vide C.A.Deb., Vol.I No.1, dated 5th October, 1951, pp 27-28)
    1. Mr. G.M.Sadiq-President of C.A., to be ex-officio Chairman.
    2. Mr. G.L.Dogra-Member 3. Maulana Mohd. Sayed-Member
    4. S.Harbans Singh Azad-Member 5. Mirza Mohd Beg-member.
33. C.A.Deb., Vol.1 No.3 dated 5th November, 1951, p.30.
34. Ibid, p.31.
35. Ibid, p.31.
36. C.A.Deb. Vol. 1 NO.3 dated 5th November, 1951, p.31.
37. Ibdi, p.32.
38. The members of the Committee (Vide C.A.De., Vol. I No.3 dated 5th November, 1951, p.31)
    1. Mirza Mohd. Afzal Beg-Chairman.
    2. Maulana Mohd. Sayed-Member
    3. Mr. D.P.Dhar-Member
    4. Mr. Bhagat Ram Sharma-Member. The Joint Secretary C.A. would function ex-officio Secretary of the Committee.
39. Ibid, p.33.
40. C.A.Deb., Vol.1 No.3 dated 5th November, 1951, p.34.
41. C.A.Deb. Vol. 1 No.4 dated 6th November, 1951, p.1.
42. C.A.Deb., Vol. 1 No.5 dated 7 November , 1951 pp 1-2.
43. Ibid, pp 1-2.
    The proposed names of the members of the Advisory Committee regarding Fundamental Rights and Citizenship were :
    (*a*) Mirza M.A. Beg as Chairman and
    (*b*) The other members-names below :
    (*i*) Mr. G.M.Hamandani,
    (*ii*) Mr. Chuni Lal.
    (*iii*) Mr. Abdul Gani Goni.
    (*iv*) Mrs. Maini.

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(*v*) Mr. Mubarak Shah
(*vi*) S.Kulbir Singh
(*vii*) Mr. Mansukh Rai.
(*viii*) Mr. Kaushak Bakula
(*ix*) Mr. Mir Qasim, and
(*x*) Mr. Assad Ullah Mir.
Mr. Mubarak Shah would function as the Secretary of the Committee.

44. Ibid, p.4.
45. Ibid, p.10.
46. Ibid, p.12.
47. Ibid, p.13.
48. Ibid,
49. Ibid, p.16.
50. Ibid, pp 16-17.
The members of the Committee were :
The mover (M.A.Beg) as Chairman and ten other members :
(*i*) Mr. G.M.Hamandani,
(*ii*) Mr. Chuni Lal.
(*iii*) Mr. Abdul Gani Goni.
(*iv*) Mrs. Maini.
(*v*) Mr. Mubarak Shah
(*vi*) S.Kulbir Singh
(*vii*) Mr. Manuskh Rai,
(*viii*) Mr. Kaushak Bakula
(*ix*) Mr. Hakim Habibullah and
(*x*) Mr. A.Gani Trali.
51. Ibid, p.17
52. Ibid, pp 17-18.
53. C.A.Deb, Vol. 1 No.3 dated 5th November, 1951, pp 1-27.
54. "New Kashmir", Op.cit p.12.
"WE THE PEOPLE OF JAMMU, KASHMIR, LADAKH AND THE FRONTIER REGIONS, INCLUDING POONCH AND CHINANI ILAQAS-commonly known as JAMMU AND KASHMIR STATE- in order to perfect our union the fullest equality and self determination to raise ourselves and or children forever from the abyss of oppression and poverty, degrdation and superstition, from medieval darkness and ignorance, into the sunlit valley of plenty ruled by freedom, science and honest toil, in worthy participation of the historic resurgence of the peoples of the East, and the working masses of the world, and in determination to make this our country as dazzling gem upon the snowy bosom of Asia, DO PROOSE AND PROPOUND THE CONSTITUTION OF OUR STATE".
55. C.A.Deb Bol.1 No.5 dated 7th November, 1951, pp 18-20.
56. Ibid, pp 17-18.

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The members of the Committee :
(*a*) Sheikh Mohd Abdullah as Chairman and
(*b*) Seventeen other members-named below :
1. Bakshi Ghulam Mohd.
2. Maulana Mohd. Sayed.
3. Mirza M.A.Beg.
4. Pt. G.L.Dogra.
5. Mr. D.P.Dhar
6. Pt. Sham Lal Saraf.
7. Mr. Bhagat Ram Sharma
8. Mr. Mir Qasim
9. S.Harbans Singh azad
10. Major Piar Singh
11. Mr. G.M.Hamdani.
12. Mr. Moti Ram Baigra
13. Mrs. Rajinder Singh
14. Mr. Ram Piara Saraf
15. Mr. Abdul Gani Goni
16. Mr. Mubrak Shah and
17. Mr. Asad Ullah Mir.

Mr. Mir Qasim would function as Secretary of the Committee.

57. Ibid, p.20.
58. Ibid,
59. Ibid, p.20.
60 C.A.Deb., Vol. 2 No. 5 dated 31st march, 1952, p.11.
61. C.A.Deb Vol. V. No.2 dated 12 November 1952 p.5.
The members of the committee were:
1. Mr. G.M.Sadiq
2. Mirza M.A.Beg.
3. Mr. Moti Ram Baigra
4. Mr. Ram Rakh
5. Mr. Ghulam Rsul
6. Mr. Ram Piara Saraf.

62. C.A.Deb., Vol. 2 NO. 5 dated 31st March, 1952, p.12.
63. C.A.Deb., Vol. III, No.2 dated 10th June, 1952 p.2.
The members of the Committee:
1. Mirza M.A.Beg-as Chairman and the members were :
(*i*) Mr. G.L.Dogra.
(*ii*) Mr. D.P.Dhar
(*iii*) Mr. Mir Qasim.
(*iv*) S.Harbans Singh Azad
Mr. Mir Qasim would function as the Secretary of the Committee.
64. Ibid, p.2.
65. Ibid p.3.

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66. The factors- personal preference, standing in party hierarchy, personal influence with the leadership and expert knowledge.

67. Under the category of Expert Knowledge were included the responses of the following types as these wer thought to be factors contributory to a member getting expert knowledge of the Parliamentary affairs :
Personal Preference and expert knowledge; expert knowledge; firmness and capacity to contribute to the subject allotted; qualification and competency; legal knowledge; competence; legal knowledge specially in Bsic Principles Committee and Drafting Committee ; Education; Suitability ; Capacity to Speak;education and legal knowledge; and legal knowledge and knowledge of economic affairs.

68. Under the category of the "Standing in Party Hierarchy" were included the responses of the following types as these were thought to be the factors contributory to a member getting expert knowledge in the Parliamentary affairs :
Standing in the party hierarchy, expert knowledge and educational knowledge; standing in party hierarchy and expert knowledge; and standing in party hierarchy and personal preference.

69. Under the category of "Personal Influence" were included the responses of the following types :
Personal influence with the leadership and aptitude for the probiems of th epeoiple; personal influence with the leadership and legal knowledge, personal influence with the leadership standing in the party hierarchy and expert knowledge ; personal influence with the leadership, standing in party hierarchy and contribution during freedom struggle ; personal influence with leadership and standing in party hierarchy ; personal influence with the leadership, and expert knowledge ; personal influence with the leadership and educational and progressive ideas ; and personal influence with leadership.

70. Under the category of "Any other" were included the responses of the following types :
Individual representation of both the provinces ; those suiting the wishes of the leaders; those suiting the wishes of the Prime Minister ; party decision; those representing different areas of the state ; personal influence with the leadership, knowledge about the subject allotted o the committee and standing in the party hierarchy, an essential requisie that every member of the consembly be the member of atleast one committee and contribute therein; competence and political importance in his region ; contribution and attempt that every member be adjusted in the committee ; party decision as to who could be taken into which committee ; and no definite criterion except that educated members were genrally nominated.

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6

CONSTITUTIONAL CRISIS OF 1953 AND RECONSTITUTION OF COMMITTEES

The political development within and outside the State since 1947; controversies over Article 370 of the Constitution of India, Delhi Agreement of 1952 and its implementations; speeches of National Conferences leaders inside and outside the Consembly and reactions thereto resulting in occasional outbursts like Praja Parishad agitation brought on surface the brewing crisis and wide divergencies in motivations of various actors of the political drama and led to a point of complete break and ushering of a new phase in the Constitution framing process.

In Jammu, Praja Parishad strongly objected to the provision of the Indian Constitution which awarded Jammu and Kashmir a special status. It also objected to the permission granted to the State to have its own constitution and to convene a Constitutional Assembly. This gave rise to the Parishad war cry:

In one country two Constitutions ; In one country two Flags ; In one country two Presidents ; will not be tolerated....[1]

The Praja Parishad charged the National Conference and its government with adopting dubious methods[2] in the elections and boycotted Constituent Assembly's election of 1951[3].

A minor incident in G.G.M. College on 15th January, 1952[4], when a few students[5] staged a demonstration and registered a protest against the National Conference's flag, touched off the conflagration. The incident led to penalisation of the students[6], students' hunger strike[7], violence[8], police lathi charge, firing[9], intervention of the military and imposition of 72 hours curfew[10]. This led to the arrest of Praja Parishad leaders like Pt. Prem Nath Dogra[11] and others as the Government charged that the demonstration was organised and inspired by the Praja Parishad. There was sharp reaction in the State[12] as well as in India[13].

On the other hand Mirza Mohd. Afzal Beg, the then Chairman of the Basic Principles Committee pointed out in the Constituent Assembly on March 24,1952 that the State of Jammu and Kashmir would be "an autonomous Republic within the Indian Union, with a separate President, National Assembly, Judiciary, Regional Autonomy and separate citizenship[14]. Beg's statement was deeply resented not only in Jammu and Ladakh but throughout India and created serious apprehensions about the credibility of the leaders of Kashmir.

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In a memorandum submitted to the State Prime Minister Sheikh Mohd. Abdullah, Kushak Bakula, Head Lama of Ladakh and member of the Constituent Assembly, demanded for a statutory provision in the future Constitution of Jammu and Kashmir under which State's North-Eastern Frontier Province of Ladakh "covering Sinkiang and Western Tibet, would become a federating unit of Kashmir as long as the accession of the State to India endures. He urged that a separate Legislative assembly of 15 members, with an Executive Council responsible to it, should be set up for Ladakh to run the internal administration of the area. He pointed out that under that proposal Ladakh would largely bear the same relation to the J&K State as the latter did to India. Asserting that under the circumstances Ladakh would have little or no voice in the State's 75 member Constituent Assembly where it was, in point of race, language and culture a perfect stranger to the rest of the members. He claimed that his plan was the best guarantee of the stability or the connections of Ladakh with kashmir. In case his plan was not deemed feasible, he added, then a committee of 10 members elected on the joint electorate basis be set up for Ladakh and no measure affecting the economic, political and religious life of the province be passed by the State Constituent Assembly or the J&K Government without its approval ; all proposal emanating from the Statutory Advisory Committee be treated as the "Voice of Ladakh"[15].

Mr. N.G.Ayyangar, the then Minister of State of India visited Jammu in April 1952 to study the situation and to cool passions[16]. Kushak Bakula had a talk with N.G.Ayyangar and repeated the demand that Ladakh be granted internal autonomy. Dogri Sanstha- a cultural organisation of Dogra Pahari people of Jammu also submitted a representation to him mentioning that the recent announcement of Mr. M.A.Beg in the Constituent Assembly that Kashmir would be a fully autonomous republic within India had raised some basic issues which would have far reaching effect on the people and their culture[17]. Mr. Ayyangar advised that the framers of the State Constitution be practical and not led by shibboleths and Theocratic ideas and rather display a measure of political wisdom[18]. At his instance the Parishad leaders were released but Sheikh Abdullah felt hurt by central intervention[19].

In a sensational speech on 10th April, 1952 at R.S.Pura, Sheikh Abdullah said that Kashmir's accession to India would be of restrictive nature. He pointed out that hose who wanted Kashmir to lose its separate identity were talking without any conception of political realities that faced them[20]. In another speech on 18th April, 1952 at Hazratbal, he said that Kashmiris in no way were prepared to renounce their cherished ideology in furtherance of which they had offered blood and sweat during the two decades. He further

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added that Kashmir had acceded to India in respect of only three subjects- Defence, External Affairs and Communication and that they enjoyed complete freedom in their internal affairs and had the right to shape their destiny according to the wishes of the people[21]. In another speech at Hazratbal on 25th April, 1952, he pointed out that the whole world was aware of their policy that the Constituent Assembly would decide three important issues:framing of the Constitution, the future of the ruling dynasty and the accession of the State[22]. These speeches caused an uproar in some parts of the State[23] and the Indian Press[24], and the public opinion[25] was also much agitated.

Meanwhile events were moving fast within the State. The Constituent Assembly unanimously passed a resolution adopting a flag[26], for the State. Pt. Prem Nath Dogra in a statement said that the decision of the Constituent Assembly was narrow sighted and ill conceived and reflected one party's ideology, that solely comprised the Constituent Assembly. He pointed out that the provocative decision of Constituent Assembly had caused deep resentment throughout and particularly in the province of Jammu[27].

On the other hand an interim report recommending the abolition of hereditary monarchy and the election of the Head of the State was presented to the Constituent Assembly by the Basic Principles' Committee on June 10, 1952[28] and was unanimously approved on June 12,1952[29]. While condemning such decisions the Praja Parishad leaders pointed out that the people of Jammu were being made to cry for self determination, and that the will of the Kashmir valley people could not be forced on the people living outside it[30].

Sri Amar Khshatriya Prantik Sabha, Jammu also resented these decisions and passed resolutions, the copies of which were sent to the members of the Government of India[31]. The telegrams based upon the resolution were also sent to them[32].

Officially, a deputation of Kashmiri leaders was summoned in Delhi on June 12,1952[33], which arrived on June 17, 1952 and held a series of discussions with the Government in order to resolve the Constitutional dead lock. Sheikh Mohd. Abdullah also joined them on July 17,1952[34]. Preliminary discussions were held from June 12 to 20 between the Government of India and Kashmiri delegation headed by Mr. Mohd. Afzal Beg and further discussion took place between pt. Nehru and Sheikh abdullah from July 16 to July 22. All this resulted in Delhi-Agreement, 1952[35].

The Praja Parishad was of the view that Agreement was another surrender at the altar of communal instransigence and separatism of Sheikh Mohd Abdullah, "A Fraud on Indian People and an Attack on Indian Constitution"[36]. Pt. Prem Nath Dogra declared that Praja Parishad would launch a Satyagrah if the Agreement was enforced[37].

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The inhabitants of Doda district too, being much agitated, emphasised that as they had peculiar local problems and historically, geographically and culturally were quite different from their neighbouring unit, they could not in any way be attached with the cultural unit of Jammu[38]. While stressing that it must be given the status of a separate cultural unit like Jammu and Ladakh, they demanded the State to be divided into as many as five cultural units- Kashmir, Jammu, Poonch-Rajouri, Ladakh and Doda- in the future constitutional set up of J&K State[39]. Each such unit, legally, having equal status would enjoy autonomy in the conduct of their internal affairs including maintenance of law and order within their own limits[40]. These developments had made it possible for disruptive forces to make desperate attempts to the disintegrate the State.

Pro-Pak elements were also encouraged by the happening in Jammu and they demanded secession[41]. The Nationalist group demanded maximum autonomy for the State. Regional sentiment helped to fragment popular discontent and regional tension brought the regional cordiality to and end.

The State Government on the other hand lost no time in implementing those provisions of the agreement which aimed at autonomy. Monarchy was abolished, and Yuvaraj Karan Singh was elected as Sadar-i-Riyasat. As soon as he began to implement his summer Agreement with Nehru, Sheikh Abdullah was accused of ignoring those sections which confirmed Kashmir's ties with India[42]. The rumour spread that there were growing differences in the Cabinet and the working committee in regard to the interpretation and implementation of the Delhi Agreement[43].

Meanwhile the Praja Parishad adopted an eight point programme for the acceptance of which they were willing to perform Satyagrah[44]. Pt. P.N.Dogra and Dr. S.P.Mukherji met at Jullundur during Punjab Jana Sangh session on November 8,1952 and discussed the plans for a Satyagraha. On November 21, Pt. P.N.Dogra and Sham Lal Sharma were arrested and the agitation started[45]. The movement assumed serious proportions and its repercussions were felt outside the State also. Thus "Anti- Kashmiri feelings in Jammu developed anti-Muslim overtones, while anti-Jammu reactions in the valley tended to become anti-Hindu and hostile to rest of the country[46]. Dr. S.P. Mukherji entered into a long correspondence with Pt. Nehru and Sheikh abdullah but nothing substantial came out. Finally, the three communal parties of India, Jana Sangh, Ram Rajya Parishad and Hindu Maha Sabha came together in a bid to organise the movement in Delhi proper[47].

A chain of multiple reactions had followed Sheikh abdullah's attitude towards Jammu ; the agitation of the Praja Parishad, the role of its sympathetic organisations in India, its reactions in the valley and their counter reactions

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in India, the panned process of precipitation a conflict between "Kashmiri Nationalism" and "Dogra Nationalism", and Ladakh and Doda's demand for internal autonomy had created conditions favourable for the disintegration of the State and disruption of the unity of its people. Moreover, the relations between the two Governments (Government of India and the Government of J&K) and between opposition groups in the State further deteriorated. Sheikh Abdullah was prepared to make some concessions to the separatists in Jammu and Ladakh. The Basic Principles Committee of the Constituent Assembly was thus instructed to study the idea of extending autonomy to each province of the State. The State Constituent Assembly was, therefore, busy in drafting the Constitution on a fully democratic basis[48].

Broad outlines had been drawn up and discussed at length by the working committee of the National Conference. Broadcasting from Radio Kashmir, Srinagar on April 17, 1953, the State Prime Minister Sheikh Mohd. Abdullah said, "We have decided to give autonomy to the different cultural units of the State as will be provided in the Constitution that is being drawn up. This will remove all the fears of domination of one unit over the other and will make for the voluntary union and consolidation of the people of the State[49]. The proposed cultural units said to be were:

The Valley, Jammu, Gilgit, Ladakh and a region consisting of the districts of Mirpur, Rajouri, Poonch and Muzzaffarabad[50].

Three of these provinces namely Kashmir, Jammu and Poonch -Rajouri were to have each executive head a Council of Ministers responsible to the Provincial Legislatures. As far as Ladakh and Gilgit were concerned, they were proposed to be administered by Regional Councils. Authority might be given under the State Constitution to the State Legislatures to increase or decrease the area of these autonomous units or establish new units. A dual citizenship was envisaged: Permanent residents of the State would be citizens of both the State and India but a citizen of India who was not a permanent resident of the State would not be entitled to the rights and privileges of a State citizen. The relation between the State's highest judiciary, the Judicial Board and the Supreme Court of India did not appear to be clear. It seemed that opinion within the National Conference leadership on this issue was not harmonious[51].

The idea seemed to be that a measure of autonomy in their internal affairs, would remove the fears of each of these units and would provide a moral, natural and non communal impetus for a sense of belonging and political participation. Such a sense of belonging alone could effectively counter the appeal for secession in the valley or of communalism in Jammu[52].

We thus find that certain forces within and outside the State interested

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and caused some sort of polarisation among the various stand points. The Jammu integrationists were never completely reconciled to the State's accession to India in the three subjects. The special status of Kashmir under Article 370 of the Constitution of India, the Delhi Agreement of 1952 and even the proposal to give autonomy to the different cultural units of the state were unacceptable to the Dogra Nationalists. Their search for security induced them to agitate for highly unified Constitution- with one Constitution, one President and One Flag for the whole of the country. The formation of the separate consembly for the state, its own Sadar-i-Riyasat as the head, a separate emblem and a separate flag were, therefore, counter to their concept of a strong centre.

The Government of India also regarded Article 370 as a transitory provision of the Constitution. Even there existed differences of opinion among the Congress leaders about the future constitutional relationship between the State and the Centre[53]. All this created a sharp reaction and uncertainty in Jammu and Kashmir.

It was but natural that in such an atmosphere the people in the valley tended to be more and more anti-Jammu and anti-India.

All this created political instability, suspense, uncertainty and economic stress. There was also an apprehension that the Kashmir leaders might alienate the popular support in the valley and provide a handle to the secessionists.

Under these compelling circumstances a special session of the working committee of the National Conference was called at the Srinagar resident of Sheikh Mohd. Abdullah in May 1953[54]. One of the three main issues which came up for discussion was the political situation vis-a-vis Indo-Pak dispute over Kashmir[55]. The "Committee after a prolonged discussion came to the unanimous conclusion that the internal stability of the State was impossible so long as international settlement on the final affiliation of the State was not achieved"[56]. It accordingly appointed an 8-man sub committee[57], to explore avenues of an honourable settlement of the issue. The Sub-Committee, at its final session, held on June 9, 1953, adopted the following proposals as possible alternatives for an honourable peaceful solution of the Kashmir dispute between India and Pakistan[58]:

(*a*) Overall plebiscite with conditions as detailed in the minutes of the meeting dated 4.6.1953.

(*b*) Independence of the whole state.

(*c*) Independence of the whole state with joint Indo-Pak control of foreign affairs and defence.

(*d*) Dixon plan with independence for the plebiscite area.

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Then followed a period of studied inactivity and deliberate side tracking of the main issue of completing the constitution[59].

Meanwhile by the sudden death of Dr. S.P.Mukherji, the President of the Akhil Bharitya Jana Sangh and the leaders of opposition in the Indian Parliament on June 23,1953, in detention at Srinagar, the whole of North India was plunged in profound grief and submerged by a kind of anti Nehru and anti-Abdullah wave. Praja Parishad refused to believe that death occurred in natural circumstances. It was described as death in mysterious circumstances. The rumblings of similar reactions were also heard in the Frontier district of Ladakh[60].

Simultaneously there were inflammatory reports that Sheikh Mohammed Abdullah was thinking to declare Kashmir as Independent, the idea of which was said to be mooted by Mr. and Mrs. Henderson[61], and Stevenson, during his visit to Kashmir in May 1953, promised American support to the move[62]. Such reports again threatened to disintegrate J&K and to make it a pawn in international power politics[63]. The tragedy was that Sheikh Abdullah was misunderstood and his urge for maximum autonomy for the State was just taken for independence. He himself pointed out that the charge that he was planning to declare Kashmir independent was completely baseless[64].

An open rift in the camp of National Conference suddenly developed. In a cabinet of five members only Mirza Mohd. Afzal Beg continued to support Sheikh Mohammad Abdullah who decided to call a meeting of the working committee and General Council of the National Conference on August 24 and August 26,1953 respectively to endorse his new line and desired to make public his latest stand on August 21, 1953- the Idd Day[65].

The scene was now complicated enough to climax the tragic drama of Kashmir. At a workers' meeting, Shyam lal Saraf gave expression to his views in regard to kashmir's relationship with India, which did not square with Sheikh Abdullah's new approach to the problem. Moreover, there were some charge of nepotism which lacked reality[66]. Therefore, on August 6,1953 at a Cabinet meeting there were some sharp exchanges between the then development Minister Shyam Lal Saraf and the State Prime Minister. This was followed by a letter from Sheikh Abdullah demanding Saraf's resignation[67]. Sham Lal Saraf replied with a flat refusal. Protesting his loyalty to the National Conference he made no attempt to conceal the fact that he and his friends thoroughly disapproved of Abdullah's new orientation of policy[68]. On August 7,1953 three members of the cabinet led by Bakshi, accused Abdullah in a memorandum, sent to Sadar-i-Riyasat, of making arbitrary decisions of being responsible for deterioration in the administration, despotism, inefficiency and wanton wastage of public resources and alleged

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that the cabinet had lost the confidence of the people[69]. Sheikh Abdullah was summoned by the Sadar-i-Riyasat who suggested an emergency meeting of the cabinet for free and frank discussion at the palace[70]. But he refused and left for Gulmarg to spend the weekend[71]. The climax of the tragic drama came on August 8, 1953, when Sheikh Abdullah's ministry was dismissed and Bakshi Ghulam Mohd was asked to form a new ministry[72].

In the early of August 9,1953 Sheikh Abdullah was arrested and was given a letter of his dismissal along with another letter signed by G.M.Bakshi, S.L.Saraf and G.L.Dogra indicating that they all had lost confidence in his leadership[73]. Mr. M.A.Beg together with thirty three leaders of the National Conference was also arrested on August 9 and 10, 1953 under the Public Security Act[74].

The crisis of 1953 was, therefore, the result of the motivational variations arising out of the varied political considerations and failure of the leadership at various levels to reconcile the various claims and aspirations. However, this caused a serious stalemate for some time in the Constitution making by the Kashmir Consembly.

6.1. Reconstitution of Some of the Special Committees

The change in the leadership in the Consembly necessitated the reconstitution of some of the Special Committees in the Constituent Assembly.

6.1.1. Basic Principles Committee

On October 20,1953 Bakshi Ghulam Mohd moved a resolution to reconstitute the Basic Principles Committee as appointed by the Assembly by its resolution dated November 7,1951. Mr. D.P.Dhar seconded the motion[75]. Mr. Nahar Singh made a proposal that the name of Bhagat Chajju Ram and Mr. Ram Rakha Mal be included in this committee. The mover accepted the inclusion of the only name of Bhagat Chajju Ram in the committee. Mr. Nahar Singh did not press for the inclusion of the other name. The motion was put to the House and was unanimously adopted[76].

6.1.2. Advisory Committee Regarding Fundamental Rights and Citizenship

On October 20,1953 Mr. Mir Qasim moved that Advisory Committee regarding fundamental rights and citizenship as appointed by the assembly by its resolution dated November 7,1951 be reconstituted. Mr. Sham Lal saraf seconded the motion. Mr. Moti Ram Baigra moved an amendment that the name of two more members *i.e.*, Mr. Assad Ullah Mir and Mr. Ghulam Qadir Masala be included in the committee. Mr. Mir Qasim accepted the amendment. Mr. D.P.Dhar wanted that two more names *i.e.* Mr. Ayub Khaliq

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Butt and Munshi Jamal Din Dar be included in the Committee. Mr. Mir Qasim accepted that also[77]. The motion was put to House and adopted.

6.1.3. Steering Committee

On October 20,1953 Mr. Sham Lal saraf moved that steering committee be reconstituted. Mr. Mir Qasim seconded the motion. Mr. Chuni Lal Kotwal submitted an amendment that the word 'Committee Barai Tashkil-i-Kar' be substituted by words 'Rahbir Committee' in the Urdu translation of that motion. Mr. S.L.Saraf accepted the amendment, Mr. Abdul Ghani Trali wanted that the name of Mr. Mohd Anwar Shah Masoodi be also included in the committee. Mr. Saraf accepted it[78]. The motion was put to the House and adopted[79].

6.1.4. Drafting Committee.

On October 20,1953 Mr. D.P.Dhar moved that the drafting committee as appointed by the Constituent Assembly by its resolution dated June 10,1952 be reconstituted. Mr. Sham Lal saraf seconded the motion. Sheikh Mohd Akbar wanted that the name of Mr. Gh. Nabi Wani Lolabi be included in the committee. Mr. Ram Lal proposed that the name of Mr. Assad Ullah Mir be included in the committee. Mr. Mohd Ayub Khan seconded the amendment. Mr. D.P.Dhar accepted the proposed names[80]. The motion was out to the House and adopted[81].

6.2. A Sociological Analysis of the Membership of the Re-Constituted Committees.

As already stated the study of the theoretical framework of an institution does not project the correct image of it. To understand the political reality one has to study the men who mould the behaviours of the institutions. The efficiency and ability of the committees in a Consembly in the ultimate analysis depends upon the members and the level of their skills, political acumen, expertise and vision.

A sociological analysis of the members of the reconstituted committees of the Consembly shows that:

1. The Muslim comprised the largest communal group represented on the committees. This is also close correlation between the percentage of Muslims in the population and their percentage on the Committee of the Consembly.

2. The tendency was to over represent majority, and under represent minority groups. From the females, which constituted about half of the population were drawn only two members, both of them were Hindus and from Jammu. Thus, there was no representation to the female population of

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Muslim community. Both the Hindu female representatives were house wives, one of them being a social worker as well.

3. The highest percentage of the members of the committee was educated. The law graduates, however, formed a single major group in the committees. Next comes college education followed by high school education. Then comes the categories of members who had oriental Degrees, primary/middle education, knowledge of Persian/Arabic/Buddhist script or knowledge of three R's.

4. The largest number of members was in the age groups 31-40 and 41-45 years. Twenty two members were taken from the age group of 41-60 years and hence were those who had witnessed not only suppression under autocratic rulers but also the rise of political consciousness and of nationalism, struggle for freedom and even post-independent days.

5. The largest number of members of the reconstituted committees were attracted to politics between the age group of 15-20 years .

6. 16 members of the reconstituted committees had been sentenced to jail for different terms for political activities. This would seem to indicate that sufficient representation was given to those who had taken part in the struggle for freedom in the State.

7. The largest number of members of the reconstituted committees had agriculture as their occupation. It was natural since J&K is principally an agricultural area. The next largest number was from the legal profession.

8. The largest number of the members of the reconstituted committees represented an annual income group below Rs. 5,000. This was very low but it was not out of proportion to general income level of the State. The average national income per capital was Rs. 188.41 for the year 1950-51.

9. The majority of the members of the reconstituted committees has neither previous legislative experience nor administrative or local government experience.

Twenty one admitted to be having administrative experience-four had remained Ministers, one Minister and President of the Lawyers, three Deputy Ministers as well as Directors Cooperative Bank, two Secretaries/Assistant Secretaries to Government, five Chairmen/Vice Chairmen/ Directors/ Secretaries/Assistant Secretaries/Secretaries of Cooperative Stores/Debt Conciliation Commission; two had experience of military administration and four had worked as Liaison Officers/T.S.Os/ Civil Officers. Thirteen members of the Committees admitted as having experience of Local Self Government, five had remained members of the Municipalities /Town Area Committees and eight had been members of the Panchayats.

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REFERENCES

1. Madhok, Balraj:Kashmir Centre of New Alignment, Op.cit. p.124.
2. Praja Parishad Memorandum submitted to the President of India.
3. PrajaParishad Working Committee decisionof boycotting elections 1951.
4. The Jammu Disturbances, Feb. 1952, Ministry of Information and Broadcasting J&K year unknown p.1.
5. The Hindu(Madras) 6th March, 1952.
6. Ibid.
7. A Case for an open enquiry, publication Dept. The J&K Praja Parishad year not mentioned p.1.
8. The Tribune dated 11.2.1952.
9. Ibid.
10. The Press Note issued by the Jammu and Kashmir Govt. on 9.2.1952.
11. The Hindu(Madras) dated 12.2.1952.
12. In a Resolution passed by the Working Committee of Praja Parishad dated 25.2.1952 denied its hand in organising any demonstration and strongly pleaded for an independent enquiry.
13. (*i*) The Resolution of the Working Committee of Akhil Bharatiya Hindu Maha Sabha which met at New Delhi on 1,2,3 March, 1952.
    (*ii*) Shri Shibban Lal Saxena's speech in Parliament on March 3,1952.
    (*iii*) Joint-Statement issued by Seven members of Indian Parliament.
    (*iv*) Sh. H.V.Kamath's statement in Indiana Parliament on March 3,1952.
14. (*i*) C.A.Debate Vol. II No.1 dated 24.3.1952 pp 3-4.
    (*ii*) Amrit Bazar Patrika dated 28.3.1952.
    (*iii*) The Hindustan Times dated 23.3.1952.
15. The Statesman dated 25.3.1952.
16. The Hindustan Times 10th April 1952.
17. The representation submitted to Hon'ble N.G.Ayyangar by Dogri Sanstha found in Praja Parishad's old files at Jana Sangh Head Office Jammu.
18. The Hindustan Times dated 9.4.1952.
19. Gupta, Jyoti Bhushan : Jammu and Kashmir Martus Nijhoff The Hague 1968, p.196.
20. (*i*) Free Press Journals dated 14.4.1952.
    (*ii*)The Hindu(Madras) dated 12.4.1952.
21. The Hindustan Times dated 26.4.1952.
22. Ibid.
23. 22 points Memorandum submitted to the President of India by Pt. P.N.Dogra on 19th of June, 1952.
24. The Indian Express dated 15.4.1952.
25. Speech of Sh. N.C.Chatterjee M.P. In Parliament on 20.5.1952.
26. C.A.Debate Vol. II No.1 dated 7.6.1952.

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27. A Statement issued by Pt. P.N.Dogra dated 12.6.1952.
28. C.A.Debate vol.III No.2 dated 10.6.1952.
29. Ibid dated 12.6.1952.
30. Jammu Rejects a Separate Constitution for J&K State Op.cit. p.14.
31. Resolution issued by the President Sh. Khshatriya Prantik Sabha Jammu.
32. The Telegram from the President of Sh. Amar Khshtriya Prantik Sabha on 14.6.1952 to the President, P.M. Dr. Katju and N. Gopalaswami Ayyangar, Yuvaraj Karan Singh etc.
33. Delhi Express dated 27th July, 1952.
34. The Statesman dated 13.7.1952.
35. Lord, Birdwood: Two Nations and Kashmir Robert Hale Limited 63-Old Brompton Road London S.W.7, p.223.
36. Nehru-Abdullah Pact. Any Unholy Agreement and Fraud.
37. The Organizer (Weekly) Vol.VI No.11 dated 27th of Oct. 1952.
38. Gopni, Abdul Ghani: Doda-District a Pamphlet, Doda dated 24th of July, 1953.
39. IBid. p.3.
40. Ibid. p.11.
41. Korbel, Joseph : Danger in Kashmir Princton University Press 1966, p.235.
42. P.N.Bambzai:History of Kashmir, Metropolitan Book Company Pvt. Ltd. 1962, p.722.
43. Vigil-A political weekly edited by Manoranjan Guha, Delhi VolIV, No.52, Saturday Feb 13, 1953 p.5.
44. Oganiser-Vol.VI No.VI dated 22nd Sept. 1952.
45. Ibid.
46. Post-Election Politics of Jammu and Kashmir-a pamphlet found in Praja Parishad Old files in Jana Sangh Head Office Jammu.
47. Gupta, Jyoti Bhushan:The Jammu and Kashmir Op.cit. p.203.
48. Bhushan, Vidya: State Government and Politics: Jammu and Kashmir J&K Book House Jammu 1979. p.184.
49. Quami Awaz (Weekly) Jammu July 1974. pp 75-76.
50. Karbel, Joseph: Danger in Kashmir Op.cit. p.234.
51. Hindustan Standard Delhi dated May 27, 1953.
52. Post-Election Politics of Jammu and Kashmir. A Pamphlet, author and Publisher unknown but printed at Ashoka Art Press Shahidi Chowk Jammu, p.8.
53. Shankarn, V: My Reminiscenes of S.Patel Vol. II The MacMillan Company of India Ltd. Delhi 1975, p.61.
54. Sheikh Abdullah-Sadiq correspondence Op.cit. p.17.
55. Ibid.
56. Ibid.
57. Gupta, Jyoti Bhushan Das : Jammu and Kashmir Op.cit. p.206

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The eight members were :

1. Sheikh Abdullah ;
2. Maulana Masoodi ;
3. M.A.Beg ;
4. Bakshi Ghulam Mohd ;
6. S.Budh Singh ;
7. Pt. G.L.Dogra ;
8. Pt. S.L.Saraf.

58. Sheikh Abdullah-Sadiq Correspondence Opcit.
59. Ibid.
60. Winer, Myron:State Politics in India Chicago 1968, pp 220-22.
61. Vigil- A Political Weekly, Op.cit. p.5.
62. Korbel, Joseph: Danger in Kashmir Op.cit. p.237.
63. Crisis in Kashmir Explained- A Lala Rukh Publications, Srinagar, year not know. Introductory portion.
64. Gundeva, Y.D: The Testament of Sheikh Abdullah, Palit and Palit Publishers Dehradun 1974, p.46.
65. Gupta, Jyoti Bhushan: Jammu and Kashmir Op.cit. p.207.
66. Vigil, Op.cit. p.17.
67. Wood, Lord Bird: Two Nation and Kashmir Op.cit. p.137.
68. Ibid.
69. The Tiems of Inida, Bombay August 10th 1953.
70. Wood, Lord Bird: Two nations in Kashmir Op.cit. p.158.
71. Jammu and Kashmir Chronicle (Magazine) Feb, 1976, ppp 10-12.
72. Gupta, Jyoti Bhushan: Jammu and Kashmir Op.cit. p.208.
73. Gundevia, Y.D: The Testsament of Sheikh Abdullah Op.cit p.64.
74. Gupta, Jyoti Bhusha: Jammu and Kashmir Op.cit. p.208.
75. C.A.Debate Vol. VIINo.1 dated Oct 20,1953 p.6.
76. Ibid. p.8

The members of the Reconstituted Committee were :

1. Bakshi Ghulam Mohd ;
2. Pt. S.L.Saraf ;
3. Pt. G.L.Dogra ;
4. Mr. Mir Qasim ;
5. Mr. D.P.Dhar ;
6. Mr. G.R.Ranzu ;
7. Mr. Bhagat Ram Sharma ;
8. Mr. Harbans Singh Azad ;
9. Maj. Piara Singh ;
10. Mr. G.M.Hamdani ;
11. Mr. Moti Ram Baigra ;
12. Smt. Ram Devi ;
13. Mr. Ram Piara Saraf ;
14. Mr. Abdul Ghani Goni ;
15. Mr. Assad Ullah Mir ;

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16. Sheikh Mohd Akbar ;
17. Mian Nizam-ud-Din ;
18. Kh. Anbdul Ghani Trali ;
19. Raja Mohd Afzal Khan ;
20. Mr. Kh. Mohi-ud-Din Khan ;
21. Bhagat Chajju Ram.

77. C.A.Debate Vol. VII No.1 dated 10.3.1953 pp 9-10.
The memebrs of the reconstituted committee were :
1. Mr. Mir Qasim.
2. Mr. Gh. Rasool Ranzu
3. Mr. Chuni Lal Kotwal
4. Mr. Ab. Ghani Goni.
5. Mr. G.M.Hamdani.
6. Sh. Ishwar Dev Maini.
7. S.Kulbir Singh
8. Mr. Mansukh Rai.
9. Mr. Kushak Bakula
10. Masher Ch. Ahmad.
11. Mr. Mohd Ayub Khan
12. Mr. Assad Ullah Mir.
13. Mr. Gh. Qadir Masala
14. Mr. Ab. Khaliq Butt and
15. Munshi Jamal Din.

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Raipur, Bantalab
Jammu.
Acc. No....9429.....
Dated....10.12.10.

78. Ibid, pp 11-12.
The members of the reconstituted committee were :
(*a*) The President of the Consembly would function as ex-officio-Chairman and
(*b*) Five other members named below :
(*i*) Mr. Mir. Qasim.
(*ii*) Mr. D.P.Dhar.
(*iii*) Mr. Gh. Rasool Ranzu
(*iv*) Mr. Chuni Lal Kotwal and
(*v*) Mr. Mohd Anwar Shah Masoodi

79. Ibid. p.12.

80. Ibid, pp 13-14.
The members of reconstituted committee were :
1. Mr. G.L.Dogra
2. Mr. Mir Qasim
3. Mr. D.P.Dhar
4. Mr. Gh. Rasool Ranzu
5. Mr. Harbans Singh Azad
6. Gh. Nabi Wani Lolabi
7. Mr. Assad Ullah Mir.

Mr. Qasim would function as the Secretary of the committee.

81. Ibid p.14.

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7

REPORTS OF THE COMMITTEES

It is the fitness of things that after a discussion of the formation, terms, reference and reconstitution of the various committees attention should be focused on the reports submitted by them. A critical analysis of these reports reveals the entire background in which Jammu and Kashmir Constitution of 1957 took its shape and it also indicates the arduous task undertaken by the Constituent Assembly. It does not, however, mean that the reports of the committees were incorporated verbatim in the constitution or that their recommendations were most faithfully followed while drafting the constitution itself. Their real significance lies in he fact that they constituted the chief source of material for the existing constitution of Jammu and Kashmir State.

7.1. Reports of the Basic Principles Committee

The Basic Principles Committee was appointed by the Consembly in its very first session i.e. on the 7th November 1951[1] and was reconstituted on October 20,1953[2]. The Committee was to evolve the basic principles for framing a constitution for the State keeping in view the broad outline of the policy statement as well as the Delhi Agreement of 1952.

The Committee had submitted altogether the following three reports:

1. Resolution regarding the flag for the State dated June 7,1952[3].
2. The Interim Report of the Committee dated June 10,1952[4] and
3. Report of the Basic Principles Committee dated February 3, 1954[5].

7.1.1. Resolution Regarding the Flag for the State

The national movement in the State had, from the very beginning, a distinctive growth and character. Gradually, it widened the sphere of its contacts and was actively associated in particular, with Indian National Congress. But the National Conference did not have a formal affiliation with any organisation. When the question of the adoption of the flag came up in 1938[6] all possible choices were fully considered. There was no question of considering the Tricolour flag as the Indian National Congress at its Tripura session had decided:

That no political organisation in any Indian State should adopt the Tricolour[7].

The National Conference adopted a red flag with a white emblem of

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'plough' in its centre as a symbol of their political organisation in 1939[8]. The red background was adopted to signify "the ascendency of the toilers/tillers to a place of dignity and honour" and "plough to bring out the supreme need for the promotion of the interests of the vast masses of cultivators who had suffered under feudal suppression"[9]. It, thus, evolved a flag which embodied its basic programme dedicated to "the uplift of the downtrodden sections of the State's population, the peasants and the working people, both manual and intellectual[10].

Regarding the State flag the Basic Principles Committee submitted a resolution:

...the National flag of Jammu and Kashmir state shall be rectangular in shape and red in colour with three equidistant vertical strips of equal width next to the staff and a white plough in the middle with its handle facing the strips. The ratio of width to the length of flag shall be 2 : 3[11].

7.1.2. The Interim Report of the Committee dated 10th June, 1952

One of the important task of the Basic Principles Committee was to recommend the framework for the headship of the State. The Kashmir State for so many centuries had been a monarchy. The power of the monarch was of an absolute character. With the dawn of independence in the Indian Sub-continent, there remained hardly any scope for the retention of this institution in the form in which it existed in pre-1947 period.

Monarchy was retained in the constitutional scheme of New Kashmir. A section of the Consembly identified monarchy as the relic of feudal system based upon exploitation of the people in general and the resources of the State in particular. The wind of change was no doubt in favour of an untrammelled democratic order[12]. Continuation of the monarchical system would have been the imposition of an anachronism particularly when such monarchies were fast disappearing in almost all parts of the world.

Those who supported the institution of monarchy stressed that the monarchy was still a valuable institution in certain democratic constitutions. In particular, it was pointed out that in the context of conditions then prevailing in other princely States in India, there was no justification for having an elected head of this State. In fact the Consembly of Kashmir, being the creature of the ruler and deriving from him whatever authority it possessed, had no legal and constitutional power and moral justification for deciding the fate of that very ruler.

In view of the importance of the issue the Basic Principles Committee examined this important matter. In its interim report the Committee proposed[13] that:

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(*a*) the form of the future constitution of Jammu and Kashmir shall be democratic ;

(*b*) the institution of hereditary rulership shall be terminated; and

(*c*) the office of the head of the State shall be elective.

7.1.3. Report of the Basic Principles Committee dated 3rd Feb. 1954

As is evident from its very name, the Basic Principles Committee was entrusted with the most important task of evolving the basic principles on which the future constitution of the State would be based. The Committee appointed a sub-committee of three members[14] to outline the principles in view of broad outlines of the policy statement of November 5,1951 and the Delhi Agreement of 1952. The sub-committee submitted its report to the Committee on January 21,1954[15]. But with a few changes, additions and modifications of the language, the report of the Committee was submitted to the House by Mir. Qasim on 3rd February 1954[16]. The basic principles of the State Constitution would contain provisions relating to the form of the State Executive, the Legislature, the Judiciary, the Public Service Commission, the Official Language and other ancillary matters. The following were the recommendations of the committee in regard to these matters[17]:

"The state of Jammu and Kashmir would comprise such territories as formed part of the State on August, 15,1947. While retaining its autonomous character, the State would continue to remain acceded to the Union of India. The sovereignty of the State resides in the people thereof and should, except in regard to matters specifically entrusted to the Union, be exercised on their behalf by the various organs of the State. The governing features of the State Constitution would be based on democracy, equality and social and economic justice. The guiding principles of the State policy would be to ensure the rebuilding of the State by harnessing all its resources for the purpose of securing a better and prosperous life for its people. In order to achieve that end the entire economic activity of the State would be conducted in accordance with plans envisaged in Naya Kashmir. In order to satisfy the urge of the people of the State for an intimate association with the administration at all levels the Constitution would embody suitable provisions to that effect. Suitable provisions should also be made enabling the people to develop their various cultures, languages and scripts and to promote closer association and better understanding amongst themselves. Based on the decision that the Constituent Assembly would mark the termination of the hereditary rulership in the State, the Head of the State would be a person designated as the Sadar-i-Riyasat whose election and other terms of office would be regulated in

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accordance with the resolution of the Constituent Assembly dated August 21, 1952.

The Superintendence, direction and control of the Government would vest in a Council of Ministers headed by the Prime Minister who would be appointed by the Sadar-i-Riyasat. The Prime Minister would be the person who enjoyed the confidence of the State National Assembly. The Council of Ministers would be collectively responsible to the State National Assembly. The State Legislative Assembly would be composed of members chosen by direct election who would represent Constituencies determined by law. The determination of Constituencies would be on a population basis and on the scale of one member for every forty thousand of the population. Election to State Legislative Assembly would be on the basis of adult suffrage i.e. every male or female who had attained the age of 18 years and was not otherwise disqualified under the Constitution or any law made by the State Legislative Assembly on grounds of non residence, unsoundness of mind, crime, corrupt or illegal practice, would have the right to vote. Electors of a Constituency would have the right to recall. The State Legislative Assembly would have power to make laws for the State, in respect of all matters falling within the sphere of its residuary sovereignty. Its life would be five years. Provisions for the rights, powers and privileges of the members and the Committees of the Assembly would be made on the lines of corresponding provisions of the Constitution of India. The Superintendence, direction and control of all elections to the State Legislative Assembly including the appointment of Election Tribunal would vest in a Commission to be appointed by Sadar-i-Riyasat. Provision would also have to be made for a fixed period to promote with a special care the interest of the weaker section of the people by ensuring their representation in the Assembly. The Judiciary of the State would be independent of the Executive. The High Court of Judicature would consist of a Chief Justice and two or more other judges as the Sadar-i-Riyasat might from time to time appoint. In order to ensure the independent and impartial character of the High Court, a judge of the High Court would not be removed from office except by an order of Sadar-i-Riyasat passed after an address to the Legislative Assembly, supported by a majority of the total membership of the Legislative Assembly and by a majority of not less than two thirds of members of the House, present and voting, and presented to the Sadar-i-Riyasat in the same Session for such removal on the grounds of proved misbehaviour or incapacity. Provision would also have to be made for the terms and conditions of service of High Court Judges commensurate with the independence and dignity of the High Court.

The High Court would be a Court of record and would have all powers

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of such court including the power to punish for contempt of itself. The High Court would have the same power and jurisdiction as was exercised by it at present under the Constitution and any other law enforced in the State. Provisions in that respect would be modelled on those contained in the existing Constitution in the State and relevant parts of the Constitution of India. Adequate provisions would also be made in the Constitution for ensuring independence and integrity of the subordinate courts.

An appeal should lie to the Supreme Court of India from a judgement, decree or final order of the High Court in Civil Proceedings if the High Court certified that the amount or value of the subject matter of the dispute in the Court of first instance and still in dispute on appeal was and was not less than 2000 rupees or that the case was a fit one for appeal to the Supreme Court. Similarly an appeal should also lie to the Supreme Court of India in criminal matters if the High Court had on appeal reversed an order of acquittal of an accused person and sentenced him to death; or had withdrawn for trial before itself any case from any subordiante court and had in such trial convicted the accused person and sentence him to death, and lastly if the High court certified that the case was a fit one for appeal to the Supreme Court. The appeal should also lie to the Supreme Court of India in certain Civil, Criminal or other proceedings if the High Court certified that the case involved a substantial question of law as to the interpretation of the provisions of Constitution of India which applied to the State under article 370 of the Constitution. The original jurisdiction of the Supreme Court would extend to disputes between the Centre and State or States inter-se as specified in Article 131 of the Constitution of India. Provisions with regard to the establishment of a Public Service Commission would be made in the Constitution. The appointment of its chairman and members would be made by the Sadar-i-Riyasat. It would function independently of the executive. Its Chairman and other members would be removable from office in the manner prescribed for the removal of a High Court Judge. The official language of the State would be Urdu, but English language might be used for all official purposes for which it was being already used. The Constitution would also recognize the regional languages of the various cultural units of the State. Further provisions relating to the transitional and ancillary matters would be incorporated in the Constitution. Necessary provisions ensuring that an amendment of the Constitution would be made only by two thirds majority of the total membership of the Assembly would also be incorporated in the Constitution.

The State of Jammu and Kashmir having acceded to the Union of India, it became necessary to define the relationship of the State with the Centre. The relationship was originally based on the instrument of accession 1947 whereby

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the State of Jammu and Kashmir had acceded to the Union of India in matters of defence, foreign affairs and communication. When the Dominion of India became a Republic, the relationship of the State with the Union was embodied in Article 370 of the Union Constitution. The State's accession to the Union entailed certain responsibilities for the Centre to protect the interest of the State and look to its social and economic development. In order to enable the Centre to discharge its responsibilities which devolved upon it under the Constitution, those provisions in the Constitution of India which might be necessary for that purpose should be made applicable to the state in an appropriate manner. While preserving the internal autonomy of the State all the obligations which flowed from the fact of accession and also its elaboration as contained in Delhi Agreement should find an appropriate place in the Constitution."

The Committee was of the opinion that it was high time that finality in that respect ought to be reached and the relationship of the State with the Union expressed in clear and precise terms. The Committee accordingly recommended:

(*i*) that a directive be issued to the Drafting Committee to bring up appropriate proposals defining the sphere of the union jurisdiction in the State, suggesting additions, modifications and amendments, wherever necessary in the Constitution (applicable to Jammu and Kashmir) Order, 1950 to suit requirements of the State;

(*ii*) that the Drafting Committee should forthwith take up the Drafting of the Constitution for the State in the light of the recommendations contained in this report and such other reports as have been or were adopted by that Assembly from time to time.

On the February 21,1954 one of the members of the Basic Principles Committee Mr. A.G.Goni submitted to the Chairman of the Basic Principles Committee a note of dissent to that report. It contained the following points:

"(*i*) he suggested that the right of secession should be provided. For that purpose, he said, that the following sentence should be added at the end of 3rd paragraph of the report : "the State shall retain the right to secede from the Union of India";

(*ii*) he objected to the application of the jurisdiction of the Supreme Court of India over the State, and suggested that the Judicial Board of State should function as the highest court of the State"[18] ;

(*iii*) right of recall should be provided".

In view of the importance of these matters he desired that all of his points of dissent be placed before the House along with the report.

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7.2. Report of the Emblem Committee

While presenting the report, on behalf of Emblem Committee on November 12,1952, Sheikh Mohd. Abdullah pointed out that the Committee had held a number of meetings from time to time, proposed and considered various designs. He pleaded that :

...the Emblem of the State of Jammu and Kashmir, shall be Shield-like figure with three equidistant horizontal stripes and a lotus in full bloom on its top with two ploughs facing each other around its edges, the whole surrounded by two ers of corn with the inscription "Jammu and Kashmir" at its bottom as per design[19].

7.3. Report of Advisory Committee on Fundamental Rights and Citizenship

The Advisory Committee on Fundamental rights and citizenship was set up by the resolution of the Consembly dated November 7,1951 and was reconstituted by the resolution dated October 20,1953[20]. As is evident from its very name, its main task was to make recommendations as regards qualifications required for the citizenship and to define the fundamental rights of the residents of the State. The Committee had appointed a sub committee which submitted its report on January 25,1954. The report without any change or modification, was presented to the House on February 23, 1954 by Mr. Mir Qasim[21].

So far as the citizenship was concerned the committee proposed that as the State had acceded to the Union of India, every state-subject and every person domiciled in the State would be a citizen of India under the provision of Indian Constitution. The Committee stressed that the definition of State-Subject be liberalised in keeping with the changed times. It, thus, recommended that all the then existing three classes of the State-subject be removed and a uniform class of 'permanent resident be established. It proposed[22]:

Every person residing in the State who was a State subject of class first or class second or who after having acquired immovable property in the State had been ordinarily residing there for a period of not less than 10 years prior to the date of enforcement of this provision, would be a permanent resident of the State; the State Legislature would make provision with respect to acquisition and termination of the status of 'permanent resident' and by a majority of two third of the total membership would define 'permanent resident' as it deemed fit and regulate the special rights and privileges thereof; the State legislature would also have the power to provide necessary modifications to enable the subjects of the State, who had migrated to Pakistan in 1947, to return for permanent settlement under permit or under he authority of law.

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The Committee expressed the view that Government of India had recognised that the fundamental rights, as contained in Part III of the Indian Constitution would not come in the way of land reforms already introduced in the State and those which might be undertaken in the future[23]; the special rights and privileges relating to acquisition and holding of the immovable property as well as employment under the State would be fully safeguarded[24].

The Committee after examining the Fundamental Rights embodied in the Constitutions of the advanced democracies of the world, separated the two classes of rights; firstly those which would be enforced in the Court of Law and secondly those which would be guaranteed by enjoining upon the State to take specified and planned action in the field of social and economic reconstruction.

The fundamental rights recommended for inclusion in the State Constitution, like those of Indian Constitution, were grouped under seven heads, viz., Right to Equality; Right to Freedom; Right against Exploitation:Freedom of Religion; Cultural and Educational Rights; Right to Property; and Right to Constitutional remedies. Under right to equality, it was proposed that every citizen would have the right to equality before law and there would be no discrimination against any citizen on grounds of religion, race, caste, sex, or place of birth, and no citizen would be subject to any disability, liability, restrictions or conditions with regard to:

(*a*) access to shops, public restaurants, hotels and places of public entertainment; or

(*b*) the use of wells, tanks, bathing ghats, roads, and places of public resort maintained wholly or partly out of the State funds or dedicated to the use of the general public[25].

It further proposed that the State be able to make any provisions it deemed fit for women and children in order to get a just and responsible place for them in the society[26]. The untouchability was proposed to be abolished and its practice in any form forbidden[27].

Under right to freedom, it was proposed that all citizens could have right to freedom of speech and expression; to assemble peacefully and without arms; to form associations or unions; to move freely throughout the territory of the State; to reside and settle in any part of the territory of the State; to acquire, hold and dispose of property subject to the laws of the State and to practice any profession or carry on any occupation, trade or business[28].

The State would, however, have powers to impose such restrictions, as were considered reasonable by the State Legislature, on the exercise of these rights in the interests of general public, security of the State, public order, communal harmony, decency or morality, or in relation to contempt of Court,

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defamation, or incitement to an offence, or for the protection of the social rights and privileges of the permanent residents of the State[29]. Defence in respect of conviction for offences and of life and personal liberty would also be afforded and the provision and procedure pertaining to preventive detention would follow on the lines of the corresponding provisions in the fundamental rights of India[30].

All citizens would have right against exploitation. In other words traffic in human beings, forced labour, employment of children in factories etc. would be prohibited[31]. The proposed rights relating to religion were that all citizens would have freedom of conscience and be free to profess, practise, and propagate any religion and to manage their respective religious affairs[32].

Concerning the Cultural And Educational Rights, the Committee proposed that the interests of all the minorities be protected and any section of citizens having a distinct language, script or culture should have the right to conserve the same[33].

Under the right to property, it proposed that no person be deprived of his property save by authority of law. But that would not, however, in any way effect the then existing laws relating to land reforms nor would it prevent the State Legislature to make any further land reforms. Moreover, existing definition of land would be prescribed[34].

The Committee proposed that all the aforesaid rights would be subject to the over-riding conditions[35] that:

(*i*) no law of the State relating to State-Subjects to be hereafter called 'permanent residents' and regulating their rights and privilege ; and

(*ii*) no law hereafter to be made by the State

Legislature defining the permanent residents and conferring on them special rights and privileges in relation to acquisition and holding of property in the State or in matter of employment under the State or in respect of settlement in the State, and imposing restrictions on citizens other than permanent residents for any of the aforesaid purposes, would become void on the grounds that it is inconsistent with or takes away or abridges any of the rights conferred by Part III of Constitution of India.

In order to provide equal opportunities and an adequate minimum of civilized standards of life, the Committee proposed a separate set of principles which would be fundamental in the governance of the State and would be intended for the guidance of the State[36]. To realize that objective, however, the State must affect economic planning with a view to achieve multilateral advancement. Similar other rights, as the right to rest, the right to material security etc. could be ensured only when a stage of industrial development and economic prosperity, as envisaged in "New Kashmir" was achieved. The

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Committee therefore, provided that he principles of policy set forth below should serve as guidance for the State for leading the people towards that end[37]:

I. The State should, within the limits of its economic capacity and development make effective provision for securing the right to work, that is, the right to receive guaranteed work with wages in accordance with its quantity and quality, subject to a basic minimum and maximum wage established by law[38].

II. The State should endeavour to secure, by suitable legislation, economic organisation and in other ways, for all workers, industrial or otherwise, better conditions of work ensuring a descent standard of life, full enjoyment of leisure and cultural opportunities[39].

III. The state should make provision for securing just and humane conditions of work and for maternity relief for female workers.

IV. All permanent residents of the State should have the right to material security in old age as well as in the event of sickness or loss of capacity to work.

This right shall be ensured by the wide scheme of social insurance of workers and employees at the expense of the State, free medical aid for workers and the provision of a wide network of health resorts for the use of working men and women[40].

V. The State should, in particular, direct its policy towards securing[41]:

(*i*) that the permanent residents of the State, men and women equally, should have the right to an adequate means of livelihood;

(*ii*) that the ownership and control of the material resources of the community be so distributed as to subserve the common good in the best possible way.

(*iii*) that the operation of free competition should not be allowed to result in the concentration of monopolies with few individuals to the common detriment.

(*iv*) that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter vocations unsuited to their age and strength; and

(*v*) that childhood and youth are protected against moral and material abandonment.

VI. Every permanent resident shall be entitled to freeeducation, and it shall be the duty of the State to provide free education which shall be compulsory for all children upto the primary standard[42].

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VII. The State shall promote with special care the educational and economic interests of the socially and educationally backward sections of the people, and shall protect them from social injustice and all forms of exploitation[43].

VIII. It should be the obligation of the State to protect every monument or place or object or artistic or historic interest declared by the law of the State as of national importance, from injury, destruction, removal, disposal or export, as the case may be, and to preserve and maintain according to the law of the State all such monuments or places or objects[44].

The Committee recommended further[45] that :

(*i*) The Drafting Committee, set up by this House be directed to propose appropriate modifications or exceptions in Part II and III of the Constitution of India in their application to the State of Jammu and Kashmir, in the light of their recommendations contained in this report; and

(*ii*) That the Drafting Committee while preparing the Draft Constitution of the State incorporate therein the rights and principles indicated above.

7.4. The Reports of the Drafting Committee

As is evident from its very name, the Drafting Committee was interested in the most important task of giving shape to the Constitution. It submitted two reports:

(*i*) The report to implement the resolution of the Consembly regarding the termination of hereditary rulership in the State dated August 20,1952[46] and

(*ii*) The Drafting Committee report of February 11, 1954[47].

7.4.1. The Report to Implement the Resolution of the Consembly Regarding the Termination of Hereditary Rulership

The first report of the Committee was submitted by its first Chairman Mirza M.A.Beg on August 20,1952. He pointed out as the Consembly had unanimously adopted the recommendations of the interim report of the Basic Principles Committee regarding future head of the State and directed the Drafting Committee to place before the House appropriate proposals it was necessary to have corresponding adjustments in the Indian Constitution. A delegation headed by Mr. M.A.Beg was, thus, deputed to Delhi for talks. The agreements arrived at had already been adopted by the House[48]. The Committee then recommended the House to resolve:

1. (*i*) that the Head of the State would be a person recognised by the President of the Union on the recommendations of the Legislative Assembly of the State:

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(*ii*) he would hold office during the pleasure of the President;

(*iii*) he might, by writing under his hand, addressed to the President, resign his office; and

(*iv*) subject to the foregoing provisions, the Head of the State would hold office for a term of five years from the date he assumed office ;

Provided that he would, notwithstanding the expiry of his term, continue to hold office until his successor enters upon his office.

2. that the recommendations of the Legislative Assembly of the State in respect of the recognition of the Head of the State specified in sub-para(*i*) of para 1, would be made by election ;

3. that the method of election to, disqualifications for and all other matters pertaining to office of the Head of the State would be prescribed, in the Constitution, and until these were so prescribed, would be as set out in the rules contained in the schedule[49] annexed to that resolution.

4. that the Head of the State should be designated as the Sadar-i-Riyasat :

5. that Sadar-i-Riyasat should be entitled to such emoluments, allowances and privileges as may be prescribed in the Constitution and pending the framing of the Constitution, to such emoluments, allowances and privileges as might be decided by the Assembly by separate resolution :

6. that the Sadar-i-Riyasat would exercise such powers and perform such functions as might be prescribed in the Constitution to be framed by the Constituent Assembly and until such Constitution was framed, he would exercise such powers and perform such functions as had hitherto been exercised by His Highness under the Jammu and Kashmir Constitution Act 1996, as amended by act No. XVII of 2008 ;

7. that in the event of occurrence of a casual vacancy, in the office of the Sadar-i-Riyasat by reason of his death, resignation or otherwise the power and functions exercisable by Sadar-i-Riyasat shall until the assumption of the office by the newly elected Sadar-i-Riyasat in accordance with the procedure laid down in the resolution, be exercised and performed by the person recommended by the State Government for recognition as officiating Sadar-i-Riyssat to the President of India; and

8. that assembly would in due course suitably provide against the event of violation of the Constitution or gross misconduct by the person for the time being holding the office of the Sadar-i-Riyasat.

The Assembly would further resolve:

That the Prime Minister of Jammu and Kashmir state was authorised to communicate a copy of that resolution to the Government of India for favour of appropriate action, to enable it being given effect to.

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7.4.2. The Drafting Committee Report of February 11, 1954

The second report of the Drafting Committee, submitted by Mr. Mir Qasim on February 11, 1954[50] was none else than the Draft Constitution of the State. It was based as far as possible, on the decisions taken by the Consembly on the reports of the Basic Principles Committee, the Advisory Committee on Fundamental Rights and Citizenship as adopted by the House on February 6th, 1954 and such other decisions as were taken from time to time.

The Drafting Committee pointed out that the task with which the Committee had been entrusted required action in the following directions[51]:

1. Preparation of the Draft Constitution of the State;

2. Defining the sphere of the union jurisdiction in the State and for that purpose suggesting the various provisions of the Constitution of India along with modifications and exceptions subject to which these provisions would apply to the State. These would include appropriate modifications and exceptions in Part II(citizenship) and Part III (Fundamental Rights) in their application to the State of Jammu and Kashmir in the light of the recommendations contained in the report of the Advisory Committee on citizenship and Fundamental Rights ; and

3. consequential amendments in the Jammu and Kashmir Constitution Act, 1996.

As for the prepartion of the Draft Constitution for the State the Committee feels that in view of the importance and magnitude of the work involved, adequate time will be needed for the completion of this task and accordingly recommends that the same may be allowed.

The Annexure to that report while reflecting the desire of the House for the ratification of the accession of the State with the Union of India, indicated in detail the provisions of the Constitution of India which generally corresponded to Defence, Foreign Affairs and Communication and such other matters as were considered essential concomitants of the fact of accession. In accordance with the directions contained in the two reports, referred to above, the Committee had endeavoured to clearly demarcate the sphere of the Union jurisdiction keeping intact all along the residual powers of the State. While doing so the Committee had further provided adequate safeguards for preserving the basic policies of the State in respect of the land-reforms and the interests of the permanent residents of the State

A bill for the purpose of making consequential amendments in the Jammu and Kashmir Constitution Act, 1966 in the light of the Report referred to in the opening paragraph of this Report would be drafted and presented to the House in due course.

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The report annexed the provisions of the Constitution of India which, in addition to Article 1[52] and Article 370[53] along with the exceptions and modifications, if any, would apply in relation to the State of Jammu and Kashmir. These are as under:

1. The Preamble : The Committee recommended the adoption of the preamble of the Constitution of India.

2. Part I (The Union and its Territory) : So far as Article 3 i.e. the reorganisation of the State of Jammu and Kashmir, alteration of its areas, boundaries or name was concerned, the Committee recommended that no such bill would be introduced in the Parliament without the consent of the State Legislature.

In other words in case of other States, only the view of their legislatures were ascertained by the President before recommending the introduction of such bills. But in the case of Jammu and Kashmir no such bill could be introduced unless legislature of the State consented.

3. Part II (Citizenship) : The Committee recommended that this part would be deemed to have been applicable in relation to the State as from January 26, 1950. But so far as Article 7 (dealing with rights of citizenship of certain migrants to Pakistan) was concerned, a proviso was recommended to be added. The proposed proviso intended "that nothing in that article shall apply to the 'permanent residents' of the State, who after having migrated to Pakistan, returned to the territory of the State under a permit for resettlement or permanent return issued by or under the authority of any law made by the State legislature, and every such person shall be deemed to be a citizen of India".

4. Part III (The Fundamental Rights) : Though the Indian citizenship was recommended to be conferred on the people of the State, yet the drafting committee recommended the application of Fundamental Rights with modification *i.e.* article 13 of the Indian Constitution to be modified to the extent that the reference to the commencement of the Constitution was to be construed as reference to the commencement of the order *i.e.* the Constitution (Application to Jammu and Kashmir) Order, 1954. In other words, "the Fundamental Rights shall have no retrospective effect so as to affect rights and liabilities accrued before that date"[54].

The term "Scheduled Tribes" in Article 15 was proposed to be omitted. According to D.D.Basu Article 15 would apply to Jammu and Kashmir with the difference that there were no "Scheduled Tribes" in the State for the purposes of clause (4) of Article 15. Article 16 which guaranteed equality of opportunity to all citizens of India in the matters of employment or appointment to any office under the State, was recommended to be modified so that the term 'State, in clause (3) would not include the State of Jammu and Kashmir.

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The result would be that Parliament would have no power to make any law under clause (3) in relation to the State. The Jammu and Kashmir Legislature would be empowered to give special treatment to the permanent residents of the State. All the seven freedom, guaranteed to the citizens of India under Article 19, were recommended to be given to the residents of the State But for a period of five years, from the commencement of the order, the words 'reasonable restrictions' occurring in clause (2), (3), (4) and (5) would be construed as meaning such restrictions as the appropriate legislature deemed reasonable[55].

It meant that there would be no Judicial Review of clause (2) to (5). This provision, thus give power to the State Legislative to impose additional restrictions on these freedom.

5. Preventive Detention : Clause (4) and (7) of the Article 22, which guaranteed protection against arrest and detention in certain cases, was recommended to be modified so that the State Legislature could have the sole legislative powers with respect to preventive detention[56].

6. Property Rights : Clause (3),(4) and (6) of article 31 were recommended to be omitted. Hence there would be no question of obtaining the ascent of the President for enacting any law of compulsory acquisition of property under clause (2)[57]. Clause (5) of Article 31 was proposed to be substituted by a new clause (5) namely :

"(5) Nothing in clause (2) shall affect :

(*a*) the provision of any existing law ; or

(*b*) the provisions of any law which the State may hereafter make :

for the purpose of imposing or levying any tax or penalty ; or for the promotion of public health or the prevention of danger to life or property ; or with respect to the property declared by law to be evacuee property"[58].

The change proposed in Article 31 was to protect the land reforms in the State.

7. Acquisition of Estate : Sub clause (*a*) of clause (2) of Article 31-A was proposed to be substituted by a new sub-clause so that he acquisition of agricultural land and agricultural estate may not fall on the grounds that it would contravene any of the fundamental rights.

8. Powers of Issuing Writs : Clause (3) of Article 32, which authorised the Parliament by law to empower any court, to exercise within local limits, the powers of Supreme Court, was proposed to be omitted. And for clause (2) a new clause empowering the State High Court to issue writs or orders, be inserted. The recommendation implied that Parliament could not give powers to issue writs or orders, in the nature mentioned in Article 32(2) to

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any subordinate Court in kashmir. The Supreme Court of India and High Court of Jammu and Kashmir, thus, would have the power to issue writs or orders as mentioned in Article 32 for the purpose of enforcement of Fundamental Rights.

In Article 35 (*i.e.* Legislation to give effect to the provisions of fundamental rights) the Committee proposed, that references to the commencement of the Constitution be construed as references to the commencement of that order; in clause (*a*)(*i*) the words "clause (3) of the Article 16, clause (3) of article 32" be omitted; after clause (*b*) a new clause (*c*) providing that "any law in force immediately before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, the State of Jammu and Kashmir with respect to any other matters referred to in clause (7) of Article 22 shall continue in force until altered or repealed or amended by the Legislature of the State", be added[59].

9. Privileges of State Subject: A new Article 35-A after Article 35, was recommended to be added. The new proposed Article would not make invalid the existing law in force in the State or a law hereafter enacted by the Legislature of the State on the grounds that it was inconsistent with or took away or abridged any rights conferred on other citizens of India by any provision of that part. It pertained to define the classes of persons who were and should be permanent residents of the State, or conferring on such permanent residents any special rights and privileges, or imposing upon other persons any restrictions in the matter of employment, acquisition of immovable property, settlement in the State, or right to scholarships and such other forms of aid as the state government might provide[60].

10. Article 54, 55 and 81 (Parliamentary Elections) So far as this part was concerned the Drafting Committee proposed that in Article 54 and Article 55 the reference to the elected members of the House of the People and to such other members should include a reference to the representatives of the State of Jammu and Kashmir in that House; and the population of the State should be deemed to be forty four lakh and ten thousands.

Article 81, was proposed to be modified so that the representatives of the State in the House of the People should be appointed by the President on the recommendation of the State Legislature.

11. Article 53 (Executive Powers of the Union) : The Committee proposed that in proviso (1) of Art. 53, which dealt with the extent of the executive power of the Union, the words "or in any law made by the parliament" should be omitted.

12. Part XI-The Legislative Relation Between Union and the State: The Committee proposed that in Art. 246, which dealt with the scheme of

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distribution of Legislative powers, the words "Nothwithstanding anything in clauses (2) and (3)" occurring in clause (1) and clauses (2) (3) and (4) should be omitted.

The jurisdiction of the Parliament in relation to the State was thus, curtailed[61].

It was further proposed that Art. 248 and Art. 249, dealing with the residuary powers of Legislation and powers of Parliament to Legislate with respect to a matter in the Stte list in the national interest respectively, should be omitted. In Art. 250, for the word "anumerated in the Union list" the words "not enumerated in the State List" should be substituted. It proposed that in Art. 251 for the words and figures "Art.249 and 250" the words and figures "Art, 250" should be substituted and the words "under the said Articles " should be substituted. The treaty making power, dealt with in Art. 253 in relation to the State of Jammu and Kashmir, was proposed to be restricted by proviso to the extent that after the comencement of the Constitution (Application to Jammu and Kashmir) Order 1954, no part of the State could be disposed of as a result of International agreement without the consent of the State Government. It was also proposed that in Art. 254, dealing with the inconsistency between law made by parliament and law made by the legislature of State, the words "or to any provision of an existing law with respect to the provisions of clause (2)" and the words "or as the case may be, the existing law" occuring in clause (1) and the whole of the clause (2) should be omitted. Thus any law of the State Legislature which was repugnant to the law of parliament, whether passed before or after the State law, should , to the extent of sub repugnancy be void[62].

It was proposed that Art. 256(dealing with the obligation of State and the Union in administrative relations) should be renumbered as clause (1) of the Article and the following new clause[63] should be added :

"(2) The State of Jammu and Kashmir shall so executive power as to facilitate the discharge by the union of its duties and responsibilities under the Constitution in relation to that state ; and in particular, the said State shall, if so required by the Union, acquire or requisition property belonging to the Staste, transfer it to the Union on such terms as may be agreed, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India"[64].

The clause, by the words the staste should "facilitate to discharge by Union of its duties and responsibilities under 4 the Constitution" would imply something postive viz., active cooperation of the State government with the Union government.

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Art. 259 was proposed to be omitted. Art. 261 would apply to Kashmir but it would be the State legislature, not the Union Parliament, which would have the power to lay down the manner in which and the conditions under which the acts, records and proceedings of the Union oor of any other stsate should be proved in the Stsate and the effect thereof.

13. Jurisdiction of Supreme Court : It was proposed that in clause (2) of Art. 134 which dealt with the appellate jurisdiction of the Supreme Court in regard to the criminal matters, after the words "Partliament may", the words "on the request of the Legislature of State" should be inserted. In other words the Parliament by itself could not confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final orders or sentence in any criminal proceedings in the State High Court without the request of the State Legislature. Art. 135 (Jurisdiction and powers of the federal court under existing law to be exerciseable by the Supreme Court), Art. 136 (Special Leave to appeal by the Supreme Court) and Art. 139 (Additional powers of the Supreme Court) were proposed to be omitted.

14. Comptroller and Auditor General : It was proposed that in arts. 149 and 150 reference to the Stastes should be construed as not including the State of Jammu and Kashmir. Thus Comptroller and Auditor General of India would not have any jurisdiction in the State. That was why the Committee proposed that in Art. 151 clause (2) (Submission of Audit reports) should be omitted.

15. Emergency Powers : Articles 356, 357 and 360 were propose to be omitted. Thus the Union government would not have powers to declare emergency in the State because of the failure of Constitutional machinery as well as financial emergency. The President thus, also would not be able to interfere in the financial affairs of the State. So far as the President's powers to issue a proclamation under art. 352 were concerned the Committee proposed to impose limitation by adding a new clause (4). Acording to it no such proclamation of emergency would be issued unless the request came from the State government or with its concurrence.

16. Part XVII-Offical Language : It was proposed that the provisions of that part should apply only in so far as they related to the official language of the Union; the official language for communication between one State and another or between State and the Union; and the language of the proceedings in the Supreme Court.

17. Part XiX-Miscellaneous (Sadar-i-Riyasat) : The Committee proposed that in art. 361, after clause (4) a clause (5) should be added- that the article should apply in relation to the Sadar-i-Riyasat as it applied to the Raj Pramukh but without prejudice to the provisions of the Constitution of

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the Stsate: Art.362, 365 and 366 clause (2) should be omitted. In Art. 367, a new clause (4) was proposed to be added[65]. For the purpose of this Constitution as it applied in relation to the State of Jammu and Kashmir :

(*a*) reference to this Constitution or to the provision therof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State ;

(*b*) reference to the government of the said State shall be construed as including references to the Sadar-i-Riyasat acting on the advice of his Council of Ministers ;

(*c*) reference to a high court shall include references to the High Court of Jammu and Kashmir ;

(*d*) references to the Legislature or the Legislative Assembly o the said State shall be construed as including refernces to the Constitutent Assembly of the said State ;

(*e*) references to the permanent residents of the said Staste shall be construed as meaning persons who, before the commence of the Constitution (Application to J&K) Order, 1954, were recognised as State Subjects under the law in force in the State or who are recognised by any law made by the State Legislature as permanent residents of the state ; and

(*f*) references to the Raj Pramukh shall be construed as references to the person for the time being recognised by the President as the Sadar-i-Riyasat of J&K and as including references to any person for the time being recognised by the President as being competent to exercise the powrs of the Sadar-i-Riyasat[66].

18. Part XX- Amendment of the Constitution : To Art. 368 a proviso was recommended to be added by which no such amendment should have effect in relation to the State of Jammu and Kashmir unless applied by order of the President under clause (1) of Art. 370.

19. Part XXI- Temporary, transitional and special provision : Proposed that Articles 369, 371, 373 clauses (1),(2),(3) and (5) of Article 374 and Articles 376 and 392 should be omitted. In Art. 372 clauses (2) and (3) should also be omitted; refernce to the laws in force in the territory of India should include reference to Hidayats, Ailans, Ashtihars, Circulars, Robkars, Irshads, Yadashts, State Council Resolutions, resolutions of the C.A., and other instruments having the force of law in the territory of the State of J&K; and reference to the commencement of the Constitution be construed as refernces to the commencement of the Constitution (Application to J&K) Order, 1954.

20. Advisory Board : It was proposed to amend clause (4) of Article 374 in order to provide for the abolition of the State Board of Judicial Advisors

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and the transfer of the appeals pending before it for disposal to the Supreme Court.

21. Part XII (Finance, Property, Contract and Suits) : The Drafting Committee proposed that :

(*a*) Clause (2) of the Art. 267, dealing with the establishment of a contingency fund and its disposal by the Governor; Art. 273, Grants in lieu of export duty in jute and jute products; clause 2 of Art. 283, dealing with the custody of the consolidted fund and contingecy fund of a State, Art. 290, adjustment in respect of certain expenses and pension, and Art. 291, Privy purse sums, should be omitted.

(*b*) In Articles 256, 282, 284, 298, 299 and 300 reference to the State should be construed as not inluding the State of Jammu and Kashmir.

(*c*) In Art. 277, which dealt with Saving, references to the commencement of the Constitution should be construed as the reference to that order.

By and large the provisions of part XII of the Constitution of India dealing with Finance etc. would apply to the State. The object of Articles, recommended not to apply to Kashmir would be to enable the State tyo provide for those matters in its own constitution as they concerned each State individually.

22. Part XIII(Trade, Commerce and Intercouse within the Territory of India) : It was proposed that :

(*a*) In clause (1) of Art. 303 (as regards discrimination relating to trade and commerce) the words "by virtue of any entry to trade and commerce in any of the lists in the seventh schedule" should be omitted.

(*b*) In Art. 306[67] (powers of certain States in part B of the Ist Schedule to impose restrictions on trade and commerce) the words "Other than the State of Jammu and Kashmir" should be added.

23. Part XIV (Services Under the Union and the States) : It was proposed that in art. 308 after the words "First Schedule" the words "other than the State of Jammu and Kashmir" should be added.

24. Part XV- Election : It was proposed that :

(*a*) Art. 324 should apply only so far as it related to elections to parliament and the offices of President and Vice-President.

(*b*) Articles 325, 326, 327, 328 and 329 should be omitted.

25. Part XVI-(Special Povisions Relation to Certain Clases) : It was proposed :

(*a*) Articles 331, 332, 333, 336, 337, 339 and 342 should be omitted;

(*b*) In Art. 330 reference to the "Scheduled Tribes" should be omitted.

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(*c*) In Articles 334 and 335 references to the State or States should be construed as not including references to the State of Jammu and Kashmir.

26. Part XXII-Short Title, Commencement and Repeals : It was proposed that Articles 394 (Commencement) and 395 (Repeals) be omitted.

27. Schedules : It was proposed that :

1. First schedule remain as it was ;

2. Second schedule- paragraph 6 be omitted ;

3. Third schedule- Forms V,VI VII and VIII be omitted ;

4. Fourth- as it was ;

5. Seven schedule :

(*a*) In the Union List

(*i*) for entry 3, the entry (3 Adminsitration of Cantonement) should be substituted.

(*ii*) entries 8, 9, 33 and 34 the words "trading corporations including" in entry 43, entries 44, 50, 52, 54, 55, 60, 67, 69 and 79 the words "inter-stsate migration" in entry 81, and entry 97 should be omitted ;

(*iii*) for entry 53, the entry "53 petroleum and petroleum products, but excluding the regulation and development of the oil fields and mineral, oil resources; other liquids and substances declared by parliament by law to be dangerously inflammable" should be substituted ; and

(*iv*) in entries 72 and 76, the reference to the State shall be construed as not including a reference to the State of Jammu and Kashmir.

(*b*) The staste list and the concurrent list should be committed.

6. Eighth schedule remain as it was.

7. Ninth schedule :

It was proposed that after entry 13, the following entries be added, namely :

14. The Jammu and Kashmir Big Landed Estate Abolition act. (No. XVII) of 2007.

15. The Jammu and Kashmir Restitution of Mortgaged Properties Act (No. XVI of 2006)

16. The Jammu and Kashmir Tenancy Act (No. II of 1980)

17. The Jammu and Kashmir Distressed Debtors Relief Act (No. XVII of 2006)

18. The Jammu and Kashmir Alienation of Landed act (No. V of 1995)

19. Order No. 6-H of 1951 dated 10.3.1951 regarding resumption of Jagirs and other assignments of Land Revenue etc.

20. The Jammu and Kashmir State Cultivators Act (No.1, 1978).

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REFERENCES

1. C.A.Debate Vol. 1 No. 5 dated 7th November 1951 p.1.
2. C.A.DebateVol. No.1 dated 20th Otober 1953, pp 5-8.
3. C.A.Debate Vol. III No.1 dated 7th June 1952, p.1.
4. C.A.Debate Vol. III No. 2 dated 10th June 1952 45.
5. C.A.Debate Vol. III No.1 dated 3rd Feb. 1954 p.1.
6. The Flag Issue- A Pamphlet issued by The Kashmir Bureau of Information, New Delhi, year not mentioned P-11.
7. Ibid.
8. C.A.Debate Vol. III No. dated 7th June 1952, p.8.
9. The Flag Issue Op.cit. p.111.
10. Ibid.
11. C.A.Debate Vol. III No.1 dated 7th June 1952, p.1.
12. C.A.Debate Vol. III No.2 dated 10h June 1952 Appendix-A pp 45-48.
13. Ibid pp 47-48.
14. The Sub Committe (Of Basic Principles Committee)Report dated 21st January 1954 p-5.
    The members were:
    1. Mr. G.L.Dogra.
    2. Mr. Mir Qasim; and
    3. Mr. D.P.Dhar.
15. Ibid.
16. C.A.Debate Vol. VIII No.1 dated 3rd February 1954, p.1.
17. The Basic Principles Committee Report dated 21st January 1954.
18. C.A.Debate Vol. III No.1 dated 3rd Feb, 1954 pp 15-16.
19. C.A.Debate Vol. V No.1 dated 12th November 1952, p.4.
20. C.A.Debate, Vol. VIII No.1 dated 3rd February 1954, p.6.
21. Sub Committee of Adviwory Committee on Fundamental Rights and Citizenship Report dated 25th January 1954 p.9.
22. C.A.Debate Vol. VIII No.1 dated 3rd Feb. 1954 pp 6-7.
23. Ibid p.6.
24. Ibid
25. Ibid p-8.
26. Ibid
27. Ibid
28. Ibid
29. Ibid, p.9
30. Ibid
31 Ibid
32. Ibid
33. Ibid p.8
34. Ibid
35. Ibid p. 11.

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36. Ibid
37. Ibid
38. Ibid
39. Ibid
40. Ibid pp 11-12.
41. Ibid p.12.
42. Ibid
43. Ibid
44.
45. Ibid p 12-13.
46. C.A.Debate Vol. IV, No.4 dated August 20,1952, pp1-2.
47. C.A.Debate Vol. VIII No.V dated feb 11,1954, p.1.
48. C.A.Debate Vol. IV No.3 dated August 19,1952, p.56.
49. C.A.Debate Vol. IV No.4 dated August 20, 1952 p.4.
50. C.A.Debate, Vol. 4 No.5 dated August 20,1952.
51. Ibid
52. By the application of Art.1 of the Constitution of India, J&K State forms a part of the territory of Indian Union.
53. Art.370 of the Indian Constitution covers of Kashmir only and gives Kashmir a special status in that provision governing the relationship of the other states do not apply to it.
54. Basu, D.D:Commentary on the Constitution of India Vol. 5 S.C.Sarkar and Sons (Pvt) ltd Calcutta-12 4TH Ed.. P.246.
55. C.A. Debate Vol. III No.V dated February 11, 1954, p.2.
56. Ibid, pp 2-3.
57. Basu, D.D: Commentyary on the Constitution of Indian, Op.cit. Vol. 5 p.247.
58. C.A.Debate Vol. VIII No.V dated February 11,1954, p.3.
59. Ibid, p.4.
60. Ibid.
61. Bhushan, Vidya: The State Politics and Government: Jammu and Kashmir, Op.cit. p. 248.
62. Anand, Adarsh Sein: The Development of Constituition of Jammu and Kashmir, Op.cit. p 180.
63. Bhushan Vidya: The State Politics and Government: Jammu and Kashmir, Op.cit. p. 248.
64. Ibid. p.250.
65. C.A. Debate, Vol. VIII No. 6 dated 11th Feb. 1954 p.7.
66. Ibid. pp 7-8.
67. Article 306 repealed by the Constitution (Seventh Amendment).

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8

CONSIDERATION OF THE REPORTS OF COMMITTEES BY THE CONSTITUENT ASSEMBLY

The first stage in the formation of the Constitution was the preparation of the Reports of the Committees and their consideration. It constituted the first reading of Constitution by the Consembly. This work was undertaken with complete thoroughness. The discussion over the reports reveals the ideas of the members on the various problems of the basic structure of the constitution and are of great value in understanding the causes which led to the formation of the constitution, finally adopted. As Jammu and Kashmir Consembly was represented by a single party- The All Jammu and Kashmir National Conference-sincere attempts had been, therefore, made to faithfully record the views, comments, criticism and doubts expressed by political parties and their leader from outside of the Consembly particularly of Praja Parishad. The arrangement followed in this chapter is chronological and the order in which the reports came up for consideration has strictly been adhered to.

8.1. Report of the Basic Principles Committee

As already pointed out that the Basic Principles Committee had submitted altogether the following three reports:

1. Resolution regarding the Flag for the State dated June 7,1952;
2. The interim report of the committee dated June 10,1952 and
3. Report of the Basic Principles Committee dated Feb 3, 1954.

8.1.1. Resolution Regarding the Flag for the State

The Resolution regarding the Flag of the State dated the June 7,1952 contained the Flag for the Jammu and Kashmir State. It was the first report to come up for the consideration of the Constituent Assembly on the same day it was presented. It gave rise to much interesting debate.

While tracing out the history of freedom struggle since 1931, Sheikh Mohd. Abdullah explained the different features of the proposed flag. According to him 'Plough', being the prominent symbol of the peasant, represented the peasantry ; the red colour the working and labouring class, and the three vertical parallel and equidistant lines represented the three geographical divisions of the State-the Jammu Province, the Kashmir Province and the Frontier Illaquas[1]. The proposed Flag, thus, represented the unity of the peasantry and the working class, as these two classes generally comprised

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the four million people of the State[2]. It was pointed out that it could help in scientifically analysing he history of the National movement in Kashmir and its various stages[3]. The resolution was supported from different corners of the House.

Mr. Mir Qasim moved an amendment "that the word 'National' occurring" before the word flag in the first line of the resolution be deleted[4], as it was a State Flag. S.Harbans Singh Azad seconded the amendment and the mover accepted it[5]. The amended motion was then adopted with prolonged cheers[6].

The very principle of having a separate flag for the State was opposed by Praja Parishad in the State and Bharatiya Jana Sangh from outside. These parties were pleading for one flag for the whole of the country as the adoption of the a separate flag by any State would lead to disruption instead of unity. Pt. Prem Nath Dogra, the then President of the Praja Parishad, considered this flag as an anti-Dogra and regarded the Maharaja's flag as the flag of the Dogras[7].

But the National Conference leaders were o f the view that the adoption of a local flag by the State was neither peculiar not unprecedented. The practice they said, was in conformity with the basic principles underlying a federal Union.

They pleaded that all democratic States had admitted the distinctive features of federal units, and their special characteristics, whether social or cultural were preserved[8]. For instance in the Federal Republic of Germany and U.S.A. the various units are granted not only an autonomous position, but the right to adopt separate flag as well as a separate emblem to represent their distinctive character.

But all the federal states have not admitted the right to display by way of a flag their distinctive features. This right has been granted only in respect of a few federations in the world and is not a universal feature.

They further stressed that "even in Great Britain which has unitary form of government, Scotland has its own flag which represents the special Scottish sentiment and character"[9]. According to them the position of the State Flag was that of a local symbol which represented the culmination of the struggle of the people against autocracy. It was a constant reminder to the people of the great unity of purpose and outlook which had grown during the past two decades between Kashmir and India[10]. Sheikh Mohd. Abdullah, while presenting the Delhi Agreement in the Consembly for discussion, pointed out :

....The new State Flag was in no sense a rival of the National Flag, but for historical and other reasons connected with the freedom struggle

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State, the need for the continuation of this flag was recognised. The Union flag to which we continue our allegiance as a part of the Union will occupy the supremely distinctive place in the State....[11]

Thus the new State flag was in no sense a rival to the National Flag.

While replying to a question whether adoption of a separate flag by Kashmir would be compatible with the sovereignty of the country as a whole, even Pt. J.L.Nehru pointed out that :

"the State must not only recognise but display and use on all major functions the National Flag of India. For national and international purposes they have the flag of India"[12].

The Resolution was approved by the Consembly after an interesting debate in which at least 21 members took part in the deliberations[13].

All the members of the Consembly rose for a moment to honour the flag[14].

On the request of the President of the Consembly, "Kh. G.M.Sadiq", Sheikh Mohd. Akbar recited the following poem of the flag to the House and the members kept standing till the he had finished his poem[15].

A NATIONAL SONG

Let this Flag of Kashmir be unfurled,
Th Flag of our people,
Of young and old alike,
Of the strong and the non violent,
And of our poor peasants
Whoever plough the land.
Let this Flag be always flying
Over our valleys and our lakes,
Till the day of Judgement
Let it raise its proud head.
May this Flag forever fly
Over the meadows and the mountain tops
Over pastures green and rushing streams,
And limitless expanse of land,
May it ever fly over the houses of the poor
And adom the mansions of the rich.
Let this Flag be ever flying
In the four orners of this land,
Till the day of Judgement
Let this our symbol be,
This red Flag of Kashmir,

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This beloved flag of ours,
And of our peasant too ;
Which brings succour to the poor
And the down trodden
And gladdens every heart.
May it fly forever
In every nonk and corner
Till the day of judgement
May I behold Thee!

Pt. Prem Nath Dogra, the President of the All Jammu and Kashmir Praja Parishad (the party not represented in the Consembly in a statement which meat nothing to the Consembly) said that the decision of the Constituent Assembly was narrow sighted and ill-conceived and reflected one party's ideology, that solely comprised the Constituent Assembly. He pointed out that the provocative decision of the Constituent Assembly had caused deep resentment throughout particularly in the province of Jammu[16].

8.1.2. The Interim Report of the Committee of June 10,1952

The Interim Report of the Basic Principles Committee dated June 10,1952 then came up for consideration of the Consembly on the day it was submitted.

The consideration of the report continued for three days. All the twenty nine members[27], who took part in the deliberations, supported the proposed recommendations of the Committee. In their brief speeches they referred to the events which led to the establishment of monarchies in the world, the Divine Right of Kings, the people's revolt against them and their stress that the sovereignty rested with the people and not with the individual. While pointing out the amount of suffering of the people under the Dogra rule and tracing out the history of the freedom struggle in Kashmir, they stressed that wherever monarchies had existed in the world they had been the playground of imperialism exploitation and internal misrule. It had always been the symbol of imperialism to disrupt the people's movement[18]. The report was then adopted unanimously[19].

Pt. Prem Nath Dogra, the President of the All J&K Praja Parishad, while pleading for the full and unqualified accession of the State to India explained the attitude of his party with respect to the question of elected head of the State. He stressed that :

(*i*) They were in favour of the ruler functioning as Raj-Pramukh of the State as in other similar States ;

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(*ii*) They were opposed to the head of the State being appointed or removed at the behest of the Assembly ;

(*iii*) They mere opposed to the head of State being elected by the local legislature periodically for a number of years, because that would make him a plaything of local politics and a mere puppet of the unalterably fixed communal majority party in that legislature.

(*iv*) The Constituent Assembly of Kashmir, being a creature of the Ruler and deriving from him whatever authority it possessed, had no legal and constitutional power or moral justification for deciding the fate of that very ruler ;

(*v*) That the instrument of Accession signed by Maharaja Hari Singh, as the legal Sovereign of the State, and by the Governor General of India was in the nature of solemn contract or treaty which could not and should not be repudiated or modified unilaterally by one party,much less at the behest of an Assembly which was never a party to it ;

(*vi*) The attitude of the National Conference leaders towards the ruler from whom they derived authority smacked of vindictive and communal bias and did not seem to be consistent with the best interests of India or of the State ;

(*vii*) It was unwise and inexpedient at that juncture to remove the one authority which had provided the sole unifying link for and had commanded the allegiance of the heterogeneous elements constituting the State of J&K for more than a century ; and

(*viii*) It was unwise and inexpedient in the interest of the State as well as of India to accord a discriminatory treatment to the ruler of the State, so long as Raj Pramukhs continued in other States like Hyderabad[20].

8.1.3. Report of the Basic Principle Committee dated 3rd Feb. 1954

The consideration of the report, along with the report of he Advisory Committee on Fundamental Rights and citizenship started on the February 4,1954 and continued for three days[21]. There was a good deal of debate on the note of dissent as well as on the principles incorporated in the Report.

According to Mr. A.G.Goni the report was not only against the principles of New Kashmir programme but also smacked of Indian Imperialism, which implied handing over everything to the Indian Union[22]. He pleaded for the right of recall, the right of secession and stressed that the issue of accession of the State could be validly discussed and finally decided only when the representatives of 8 lakh people on the other side of the ceasefire line were also duly represented in the House. The State judiciary, he added, was more

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independent and Maharaja had more powers in the times of Maharaja than as proposed in the report[23]. While refuting all the charges levelled by Mr. Goni, the report was supported from different corners of the House. The supporters were of the view that the report was comprehensive; was very much in accordance with the New Kashmir programme[24]; was based upon the Delhi Agreement of 1952; followed the path mentioned in policy statement; fulfilled the promises they held out to the people for the betterment of their political, economic and social life to a great extent; fully answered the demand of the times and removed doubts and suspicions created among unsophisticated people by misrepresenting the issue[25]. They stressed that the demand for secession was dangerous and was raised by reactionary elements; the right of recall would also serve no purpose; the extension of the jurisdiction of the Supreme Court would enhance the prestige of the State judiciary and the people of the State would also retain the fullest internal autonomy[26]. Mr. A.G.Goni then left the house without any expression[27]. Mian Nizam-ud-Din denied that the report had been prepared under duress or under the influence of any outside authority[28]. Whereas Mr. Ghulam Mohi-ud-Diun wanted that Article 370 of the Indian Constitution be given a position of permanence[29], Sr. S.L.Saraf moved an amendment that at the end of the para 3 relating to language be added:

as also the official language of the Union for the purposes of the Union or the proceedings of the Supreme Court or communication between the Union and the State, or States, inter se[30].

The amendment was seconded by Mr. Ghulam Mohd Mir Rajpuri[31] and accepted by Mr. Mir Qasim[32]. The amended report of the Basic Principles Committee, minus the note of dissent, was then put to the vote of the House and adopted unanimously[33].

Prof. Balraj Madhok, the leader of the Jana Sangh, was of the view that some of the directives of the Basic Principles Committee about the form and shape of the Constitution of the State demanded a critical revision by the powers that be in new Delhi and Constitution makers of Jammu and Kashmir. These were pertaining to:

1. a Sadar-i-Riyasat to be elected by the State Legislature.
2. the appointment of the judges of the State High Court by the Sadar-i-Riyasat on the advice of the Ministry; and
3. a separate Election Commissioner for the State to be set up by the Sadar-i-Riyasat[34].

He was of the view that a Sadar-i-Riyasat, elected by the State Legislature, was not only a departure from procedure laid down by the Constitution of India for the State but bound to reduce the head of the State to

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the position of a puppet in the hands of the party in power in the legislature. He would not be able to perform any of the supervisory functions laid down for him by the Indian Constitution and would not be able to command that respect, from all sections of the population, which only a non party man enjoying the confidence of the parties, could command[35].

So far as the appointment of High Court Judges by the Sadar-i-Riyasat on the advice of the Ministry was concerned, he pleaded that they should be appointed by the President of India as in the case of other State High Courts in the country. This would guarantee the independence of judiciary as the judges appointed by Sadar-i-Riyasat, who himself would be under the thumb of the party in power, could not be expected to inspire confidence about their independence[36].

The proposal for separate Election Commission for the State to be set up by the Sadar-i-Riyasat, was described by him as the most reactionary recommendations while emphasising the special significance of conducting free and fair elections to the various bodies, in the growth of democracy in a backward country. He pointed out that in Jammu and Kashmir the people had grave doubts about the way elections to the C.A. were conducted. They forced the Praja Parishad, the Chief Opposition party in the State, to boycott the elections, he added. He stressed that it was, therefore, all the more necessary that elections there be conducted by the Election Commissioner of India to restore the confidence of the people in the Parliamentary System of government. He demanded that the provisions be amended to bring the future constitution of the State in line with other acceding States[37].

The Reports of the Basic Principle Committee as amended by the House minus the dissenting notes was unanimously adopted amidst prolonged cheers on 6th February, 1954[38].

8.2. Report of the Emblem Committee

Briefly tracing the history of the different Emblems adopted in the State from time to time, Sheikh Mohd Abdullah highlighted he salient features of the proposed Emblem. The two ploughs on two corners facing each other rendered peasantry conspicuous as it constituted 95% of the State population. The two ears of corn denoted the agrarian economy of the State. The three horizontal stripes represented the Illaquas of Jammu, the Kashmir valley (which was called the lotus home) and the Goddess of learning (as Kashmir had been the cradle of learning in peaks of the Himalayas). To denote all these things the lotus was shown raised from the level of water in the Emblem[39]. Major Piar Singh, Mr. Ghulam Mohd. Jalib, S.Harbans Singh Azad, S.Kulbir Singh, Kh. Ghulam Ahmed Dev and Mr. Ram Piara Saraf

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while highlighting its features supported the motion[40]. They pointed out that the Emblem depicted the economic conditions and culture of the State[41]; its five parts constituted in themselves historical and cultural stories[42]; it reflected the past and present civilizations of the country[43], and it denoted the desires and aspirations of the class in power. The motion was then put to the House and adopted[45].

8.3. Report of the Advisory Committee on Fundamental Rights and Citizenship

The report of the Committee was taken up for consideration along with the report of the Basic Principles Committee[46]. The report was supported from different corners of the House. In three days's deliberations[47] number of suggestions were made but only two amendments were ultimately adopted[48].

Mr. Chuni Lal Kotwal, Mr. Abdul Gani Trali and Kh. Ghulam Qadar Masalah wanted that three of the rights-right to work, right to education and right to rest- either be incorporated in the report as fundamental rights or a time limit be stipulated within which these rights would be put into practice[49]. Kh. Ghulam Qadir Masalah in order to remove injustice to women wanted the incorporation of the provision that a man would not contract more than one marriage[50]. Mr. Ram Piara Saraf wanted that in clause 4 of the report the words "incitement to an offence" were undesirable and be deleted; no member of the Assembly could be arrested without the permission of the Assembly, and when the latter was not in session, without the permission of the presiding officer ; the people should have the right to amend the Constitution whenever they wished and to enact any legislation they liked[51]. Mr. Assad Ullah Mir moved an amendment[52] of a technical nature:"In clause 10(ii) at page 6 of the report for the words 'and imposing restrictions on citizens other than permanent residents for settling within the State' the words 'or as respects settlement in the State and imposing restrictions on citizens other than permanent residents for any other aforesaid purpose should be substituted'.

Similarly Mr. Bhagat Ram Sharma moved[53] that "in clause 11 of the report the words 'besides the State High Court' should be added at the end".

Mr. Mir. Qasim considering both the amendments as technical in character, accepted them. The amended report was then put to the House and was adopted unanimously[54].

While stressing that the provisions about the 'State-Subject' needed to be rationalized and brought in line with the rules prevailing in the States, Prof. Balraj Madhok, the leader of Jana Sangh, pointed out that the

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recommendations about the 'State-Subject' implicitly laid down a separate citizenship for the State. Inspite of the fact that the then existing definition about 'State-Subject' and its division into different categories, was an anachronism and needed to be changed, the Basic Principles Committee had in fact recommended that the old system be perpetuated[54]. He was of the opinion that "permanent resident", of the State by which the term "State-Subject" was to be substituted, was to be one who had lived there for ten years and had acquired immovable property. For acquiring immovable property he would have to secure an "Ijazatnama" from the State Government. Thus in fact, said he, no citizen of India outside J&K State could autonomically become the citizen of the State even though he might have been living there for a hundred years. He did agree that the State Government could make special rules for the benefit for permanent residents of the State as was being done by some other States[56].

8.4. Reports of Drafting Committees

As already pointed out that the Drafting Committee had submitted the following two reports :

(*i*) The report to implement the resolution of the Consembly regarding the termination of hereditary rulership in the State dated August 20,1952[57] and

(*ii*) The Drafting Committee report of February 11,1954[58].

8.4.1. The Report to implement the resolution of the Consembly regarding the termination of hereditary rulership in the State dated 20th August, 1952

The deliberations on the report continued for two days. Two amendments were moved[60]. Mr. Mubarak Shah moved that in schedule[61] :

(*a*) sub-clause (2) of clause 1 may be deleted and the figure (1) within the brackets be omitted;

(*b*) in sub clause (*b*) of clause 1 so amended, after the words 'on the date of filing nomination papers' be added the words '21 years'.

Hakim Habi Ullah moved another amendment[62]:

that in sub para (1) of para 1 of the resolution appended to the report of the Drafting Committee for the words "President of the Union" the words "President of India" be substituted".

Mr. M.A.Beg accepted both amendments[63]. The amended report was then supported from different corners of the House[64]. It was then put to the House and adopted.

8.4.2. The Drafting Committee Report of February 11,1954

The deliberation on Second Report of the Drafting Committee started on February 13,1954 and continued for three days[65] and about twenty

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members had taken part in the deliberations. So far as the proposed addition in part I(The Union and its Territory) i.e. in Art. 3 of the Constitution of India was concerned, Pt. Prem Nath Dogra was of the view that proposed addition of the new clause in the said article would in certain respect over lap the then existing proviso of the Article[66].

While opposing the change in Part II (**Citizenship**) of the Constitution of India Pt. Prem Nath Dogra pointed out that if the change was to apply to the State as from January 26, 1951, whereas the state had acceded to the Indian Union since October 26,1947, "what would be thus, be the status of the people of the State between those two days?" would they be deemed to have been aliens during that intervals"[67]?

The proposed modifications in **Articles 54, 55 and 81 of the Constitution of India (Parliamentary Elections)** were opposed by the Praja Parishad on the following grounds[68]: In the first place, it was unfair to deprive the people of the State of their right to choose by direct election their representatives in the House of the People. When direct election was held for the State Assembly, electoral rolls were prepared on the basis of adult franchise. Such rolls could be prepared also for the parliamentary elections. If the population of the State could be assumed to be 44,10,000 for the purposes of article 55, as had been proposed, there was no reason why the same figure should not be adopted for the purpose of Article 81. Secondly, it would be misnomer to categorize the representatives of the State as 'elected members' for purpose of Article 55 as had been proposed, when at the same time, it was being clearly provided under Aticle 81, that they should be "appointed" by President. Thirdly, it was wrong to provide in the Constitution itself that the population of the State be deemed to be 44,10,000 as that figure was bound to vary frequently, and the Constitution would not be liable to frequent changes.

Article 53 (Executive Powers of the Union):The Committee proposed that in proviso (1) of article 53, which dealt with the extent of the executive power of the Union, the words " or of any law made by the Parliament" should be committed.

The Article was in force in the state by virtue of the Constitution (Application to jammu and Kashmir) Order, 1950. But it was proposed to repeal certain words from the proviso to clause (i) of the said article. No reason had been given for the proposed repeal. Pt. Prem Nath Dogra emphasized that considering that clause to deal with the matters with respect to which the Parliament had power to make laws, and that the whole Article dealt with the extent of the executive power of the Union, it would be better either to omit the proviso altogether or to leave it unmodified[69].

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Comptroller and Auditor General : It was proposed that in articles 149 and 150 references to the States should be construed as not including the State of Jammu and Kashmir. Thus Comptroller and Auditor General of India would not have any jurisdiction in the State. That was why the Committee proposed that in Article 151 clause (2) (submission of Audit reports) should be omitted.

The Praja Parishad was of the view that these articles were necessary to apply to the Sate in the interests of sound financial administration and economy. Moreover, the application of such provisions was also most inescapable as the State was going to get its share from the common pool of the certain central taxes[70].

Emergency Powers : So far as modification is concerned the Articles 356,357 and 360 were proposed to be omitted. Thus the Union Government would not have powers to declare emergency in the State because of the failure of Constitutional machinery as well as financial emergency. The President thus, also would not be able to interfere in the financial affairs of the State. So far as the President's powers to issue a proclamation under Article 352 were concerned, the Committee proposed to impose limitations by adding a new clause (4). According to it no such proclamation of emergency would be issued unless the request came from the State Government or with its concurrence.

The critics were of the view that part of the Constitution should apply to the State in its entirety without any modification[71].

Part XVII-Official Language : It was proposed that the provisions of that part should apply only in so far as they related to the official language of the Union ; the Official language for communication between one State and another or between State and the Union; and the language of the proceedings in the Supreme Court.

The critics wanted that part should be made applicable to the State for all purposes. They emphasised that as Urdu was not the spoken language of any considerable section of the people in any part of the State, its imposition as the official regional language of the State and as the medium of instruction would not be fair[72].

Advisory Board : It was proposed to amend clause (4) of Article 374 in order to provide for the abolition of the State Board of Judicial Advisors and the transfer of the appeals pending before it for disposal to the Supreme Court.

The critics objected to it as the Board's jurisdiction was wider than that proposed to be conferred on the Supreme Court. Hence they contended that

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this would make the matters worse, that it would result in greater finality attaching to the decisions of the local courts, because fewer appeals would lie to the Supreme Court than lay to the Board at that time. They further pointed out that the appellate jurisdiction of the Supreme Court in relation to the J&K Courts would not be as wide as that which it exercised in relation to the courts of the other States. The provisions contained in chapters V and VI of Part VI read with part VII of the Indian Constitution relating to judiciary were not being made applicable to the judiciary of that State. They added that the judiciary of the State including its High Court would not command the same measure of confidence and prestige which the judiciary of other States commanded. It was necessary, they said, that the State be brought up to the level of the other States by applying to it all the provisos of the Indian Constitution relating to judiciary just as they applied to the other part 'B' States[73].

Part XII (Finance, Property, Contract and Suits : The Drafting Committee proposed that :

"(*a*) Clause (2) of the Article 267 dealing with the establishment of a contingency fund and its disposal by the Governor : Article 273 Grant in lieu of export duty in jute and jute products ; clause 2 of the Article 283 dealing with the custody of the consolidated fund and contingency fund of a State, Article 290 adjustment in respect of certain expenses and pension, and Article 291, privy purse sums, should be omitted.

(*b*) In Article 256, 282, 284, 298, 299 and 300 reference to the States, should be construed as not including the State of Jammu and Kashmir.

(*c*) In Article 277 which dealt with Saving, references to the commencement of the Constitution should be construed as the references to that order."

By and large the provisions of part XII of the Constitution of India dealing with Finance etc. would apply to the State. The object of Articles, recommended not to apply to Kashmir, would be to enable the State to provide for those matters in its own Constitution as they concerned each State individually.

Part XIII (Trade, Commerce and Intercouse within the Territory of India : It was proposed that :

"(*a*) In clause (1) of Article 303 (as regards discrimination relating to trade and commerce) the words "by virtue of any entry to trade and commerce in any of the lists in the seventh schedule should be omitted.

(*b*) In Article 306 (powers of certain States in part B of the Ist Schedule to impose restriction on trade and commerce) the words "other than the State of Jammu and Kashmir" should be added."

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According to Basu the provision in Articles 301-307 would apply to the State with the difference that the prohibition in clause (1) of article 303 would extend to laws under any power belonging to the Legislatures of the Union or the State of Jammu and Kashmir.

While opposing the proposed modification in list 1, entry No. 3, of the Seventh Schedule Pt. Prem Nath Dogra pointed out that there was no justification for the curtailment of its scope.He was of the view that the expression "administration of cantonments" was not wide enough to cover all the functions included in that entry. He emphasised that it should not be forgotten that the State was still a war area and that the opposing armies were still facing each other on its borders[74].

He again opposed the omission of entry No.9 of list 1 schedule VII and said that there was not even the slightest justification to omit it altogether. He emphasised that it should be retained as its subject matter was concerned with defence, Foreign Affairs, and the Security of India, which were the exclusive concerns of the Union[75].

Ninth Schedule :

It was proposed that after entry 13, the following entries be added namely:

14. The Jammu and Kashmir Big Landed Estates Abolition Act (No. XVII) of 2007.

15. The Jammu and Kashmir Restitution of Mortgaged Properties Act (No. XVI of 2006)

16. The Jammu and Kashmir Tenancy Act (No. II of 1980)

17. The Jammu and Kashmir Distressed Debtors Relief Act (No. XVII of 2006)

18. The Jammu and Kashmir Alienation of Land Act (No. V of 1995)

19. Order No. 6-H of 1951 dated 10.3.1951 regarding resumption of Jagirs and other assignments of Land Revenue etc.

20. The Jammu and Kashmir State Kuth Act (No. 1, 1978)

Pt. Prem nath Dogra, while opposing the proposed change in Ninth Schedule, further pointed out that it was inequitable and unnecessary to protect some of those laws in that manner. In particular, he added, the Distressed Debtor's Relief Act, the Alienation of Land Act and the whole of the Tenancy Act need not find a place in that Schedule[76].

Mr. Ghulam Mohd. Rajpuri wanted that :

"at page 2 of the annexure to the report in sub-clause (*g*) of clause (4) after the word, figures and letter "rticle 31-A" the words, brackets and figures, "Proviso to the clause (1)" shall be omitted and...shall be inserted[77]."

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Mr. G.L.Dogra pointed out an omission in the annexure to the report and put forth a correction slip:

"In the annexure to the report of the Drafting Committee please read, "the application of these provisions to the State" for the words "the commencement of this order 'or' the commencement of the Constitution (Application to jammu and Kashmir) Order 1954" wherever occurring. The above mentioned amendment was also accepted[78]."

Mr. Bhagat Ram moved that[79]:

"At page 11 of the report in clause 24 entry '20' "The Jammu and Kashmir State Kuth Act (No 1 of 1978)" should be added at the end. It was also accepted[80]."

Kotwal Chuni Lal moved that :

"At page 2 of the annexure to the report of the Drafting Committee for sub-clause (*d*) of clause (4) the following sub clause be substituted[81]:

"(*d*) In Article 19, for a period of five years from the application of the provisions to the State :

(*i*) in clause (3) and (4) after the words "in the interests of" the words "the security of the State or" shall be inserted.

(*ii*) in clause (5) for the words "or for the protection of the interests of any scheduled Tribe" the words "or for the purposes only of sub-clause (*d*) of the said clause, in the interests of the security of the State", shall be substituted; and

(*iii*) the following new clause shall be added :

(7) the words "reasonable restrictions" occurring in clauses (2), (3), (4) and (5) shall be construed as meaning such restrictions as the appropriate "Legislature deems reasonable. Mr. Mir Qasim accepted the amendment[82]."

While concluding the three days' discussion Mir Qasim pointed out that they had recommended the application of all such provisions as were necessary to define the relations of the State with the Centre. The necessary provisions for the rights of the 'permanent residents' and rights of citizenship had been added. Thus the people of Kashmir would enjoy the same rights as were enjoyed by the citizens of India. The Draft had also accepted the jurisdiction of the Supreme Court over the State in all such subjects in which it had jurisdiction in India. In other words only such subjects as were connected with their constitution had been included in the Draft[83]. The amended motion was then put to the House and adopted unanimously[84].

Even a little reflection over the foregoing paragraphs of the report reveals that most of the modifications, additions and deletions were aimed at preserving the special Status of the State of Jammu and Kashmir as in Article

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370 of the Constitution of India. They would allow greater autonomy to the State than was available to any other constituent state of the Indian Union. In a word the State of Jammu and Kashmir would have much less interference from the Centre than in case of other States.

Sardar Harbans Singh Azad, drew the attention of the House towards the directive principles according to which the Government had been directed to run the economic life of the State in such a manner as would not only remove the poverty but would also provide work to the people. He, thus, proposed[85]:

"...Drafting Committee be authorised to incorporate in clause 24 of the Annexure to the Report of the Drafting Committee such other laws as may be found essential in the public interest."

The motion was put to the House and adopted[86]. Mr. G.L.Dogra, while stressing that the report of the Drafting Committee which was adopted by the House should be got incorporated in the Indian Constitution, proposed[87]:

Resolved that (*a*) having adopted the report of the Drafting Committee this day, the February 15,1954; and (*b*) having thus given its concurrence to the application of the provisions of the Constitution of India in the manner indicated in the Annexure to the aforesaid report, this Assembly authorises the government of the State to forward a copy of the said Annexure to the Government of India for appropriate action.

This motion too was adopted unanimously[88]. Mr. Mir Qasim moved[89]:

"....As it is necessary to amplify certain provisions of the Constitution as enumerated in the Annexure to the Report of the drafting Committee adopted by this Assembly by its resolution dated February 15,1954; thus Assembly therefore (may) accord its approval to the following amendments being made in the aforesaid annexure:

(*i*) In sub clause (*a*)(*iii*) of clause 2 of Article 31-A, after the words "cantonment of" the words "town area of" shall be added.

(*ii*) clause (c) of Article 35 should be substituted as under :

"(*c*) Any law with respect to preventive detention in force immediately before the commencement of the (Application to Jammu and Kashmir) Order, 1954, in the State of Jammu and Kashmir and any law with respect to preventive detention hereafter enacted within a period of five years from the commencement of the said order by the Legislature of the State shall not be invalid on the grounds that it is inconsistent with or takes away or abridge any of the rights conferred by part III of the Constitution."

(*iii*) In Article 250 for the words "to any of the matters enumerated in the State List" the words "also to any matters not enumerated in the Union list shall be substituted" ; and

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(*iv*) In Article 295 references to the commencement of this Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Order 1954."

The Assembly further authorises the Government of Jammu and Kashmir to communicate the above mentioned amendments to the Government of India for appropriate action.

While explaining the motives of his amendments he pointed out that from the drafting point of view it was felt that some changes in the language were necessary. The motion then was put to the House and adopted[90].

Pt. Prem Nath Dogra, the President of Jammu and Kashmir Praja Parishad submitted a Memorandum to the President of India on April 15, 1954[91] with the request that the Government of India should examine the proposed Constitution with special care and to ascertain the opinion o the people of Jammu province, before accepting them finally[92]. He once again asserted that they were opposed to Jammu and Kashmir state having a separate Constitution. While criticising it he said that the unsatisfactory character of the new proposals became quite apparent, in as much as they disturbed the nice balance of adjustments hat the Indian Constitution in its entirety was intended to be. They "mutilated its organic unity without leaving a fair working arrangement". They seemed to have been cleverly devised in order to achieve the following objectives, he added:

" 1. to retain as much power as possible;

2. To part with as little of it as might be inevitable;

3. To let qualifications and exceptions swallow up what is conceded;

4. To make the powers retained be the chosen monopoly of an unalterable fixed majority;

5. To ensure that the resulting set up shall not be altered without the consent of that majority.

Some of the expedients adopted by the framer of the proposals, in order to achieve the above objectives were also enlisted in the memorandum. They were[93]:

1. Fundamental rights have been whittled down and reduced to a mockery.

2. The jurisdiction and powers of the Supreme Court had been curtailed to prevent effective enforcement of fundamental and other rights.

3. Full control over the State High Court has been retained in order that the local Judiciary may not become truly independent and embarrass the executive authorities.

4. A sort of dual citizenship has been created, within the Indian Union to its eternal shame and humiliation.

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5. One way traffic from Pakistan in the matter of settlement within this State has been provided for.

6. Direct elections to the House of the people from the State have been avoided, in order that the authentic voice of the people of this State may not be heard even in the Indian Parliament.

7. The powers vested in the Central organs of authority in the Indian Union in relation of the other "part 'B' States" have been curtailed even in matters of common and national interests where uniformity of action is necessary.

8. The status of the Sadar-i-Riyasat has been made inferior even to that of a Governor, and his position precarious by leaving him at the mercy of a prejudiced and an unalterable fixed majority in the local legislature.

9. Even the Delhi pact has not been fully implemented.

10. Certain provisions of the Indian Constitution which are applicable to this State at present are proposed to be repealed.

11. The capacity and powers of the Indian Union to take prompt and effective action in relation to this State at times of emergency have been crippled.

12. Provisions relating to effective and independent audit and financial control have been omitted.

13. Drastic and confiscatory "laws less" laws are proposed to be legalized[94]."

Pt. Prem Nath Dogra further added that the Constitution should not have been conceived and hatched in a secret manner behind closed doors, without associating any person unconnected with the Government or the Assembly even in an advisory capacity at any stage of their formulation or consideration. Rather such an important matter as Constitution, he emphasised, ought to have been circulated for public opinion before it was finally passed[95].

Pt. Prem Nath Dogra, also submitted a representation to Shri Govind Ballabh Pant, the then Home Minister Government of India on July 24,1956[96]. A copy of the memorandu, submitted to President of India on October 1, 1954[97], was also sent to him. He pointed out that the people of Jammu were opposed to Jammu and Kashmir state having a separate Constitution, as distinct and different from the Constitution of India. The representation pointed out that Praja Parishad, which had the backing of a large majority of the people of Jammu province at least, was definitely opposed to any distinction being made between Jammu and Kashmir State and other Constituent Units of India as that would perpetuate a sense of separatism in a large section of the people of Kashmir which was being exploited fully by Pakistan to the

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detriment of the interests of Kashmir State as also of India as a whole. Pt. Dogra pointed out that the exact character of the Constitution being drafted, was not known to them. But indications were that they proposed to stick to their original plan of making the Constitution distinct and different from the Constitution of India in every material respect. They had learnt, he added, that it did not provide for the auditing of State accounts by the Auditor General of India, nor did it accept the supervision of Election Commission of India over the elections in the State; the appointment of the judges of the State High Court was being left to the discretion of Sadar-i-Riyasat, who was nominee of the President and that Supreme Court of India was not being given full jurisdiction over Kashmir;Elections for the State representatives to the Lok Sabha were sought to be kept indirect and no provision for reservation of seats for Harijan through double member constituencies was being made. All this was most perturbing, said he. While concluding the representation he requested him to see that these objectionable features of the proposed Constitution of the State were removed and that it was brought completely in line with the Constitution of India.

Pt. Prem Nath Dogra, then wrote a letter to Bakshi Ghulam Mohd, the Prime Minister of the State on February 13,1954[98] in which he, once again explained the stand of his party and his objection to the proposed report of the Drafting Committee. He stressed that his party was and had always been for the full application of the Constitution of India to the State. Even the Delhi Agreement never satisfied them, he added. Nevertheless in view of International situation and other factor he stressed, they had been giving full support to him and his government. He pleaded that the proposed report of Drafting Committee was far from satisfactory. He made him remember that when he submitted certain shortcomings in the reports of Basic Principles Committee and the Fundamental rights Committee, he had assured him that the final draft would be perfectly in accordance with the letter and spirit of the Constitution of India, with the exception of protection for Land Abolition Laws and the superior rights for the 'Permanent Residents' in matters concerning acquisition of immovable property and employment in Government Service. But the provisions in the proposed Draft report fell short of even the matters agreed upon in Delhi Agreement. He objected to the proposed indirect election to the Parliament, the denial of special level by the Supreme Court, curtailment of peoples' rights and circumscription of the application of Indian Constitution and whittling down the fundamental rights in a variety of ways.

He accused that the whole thing was being rushed through the Consembly without giving adequate opportunity to the public for expressing their opinion and making suggestions for improvement of the Draft

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Constitution. While concluding he requested him to go through the proposed draft very carefully and remove the defects to allay public apprehensions. Pt. Mauli Chandra Sharma, the President of all India Bhartiya Jana Sangh, pointed out Jana Sangh's right objections to the proposed Kashmir Constitution[99]. These were summed up as under :

The relationship as envisaged in it left much to be desired and it was doubtful whether it would satisfy the aspirations of the people of the State, who had been struggling for the last six years to be one with their Indian brethren as also of the people of the rest of India who had been making all kinds of sacrifices for the security and welfare of the State. A glaring flaw was that it conceded to the State the right to discriminate against the citizens of the rest of India in the matter of entry, residence, employment and acquisition of immovable property in that State. By creating a category of Permanent Residents of the State as distinct from other Indian citizens as Dual Citizenship had been brought into existence in that State which was opposed to the very basis of their Constitution.

The provision for the nomination of the State Representatives to the Parliament on the recommendations the State legislature instead of their election by a direct vote of the people as in other States, deprived the people of the State of their basic democratic rights as Indian Citizens. Why should the State have its own Election Commissioner and its own census operation ? The extension of the jurisdiction of the Election Commission of India to the State was essential not only to create confidence in the people about the fairness of the elections there but also to make them feel that they were the citizens of India.

Another objectionable provision was the right given to State Legislature to permit and regulate the entry of those who had left the State and gone over to Pakistan. Such movement of individuals or groups between India and Pakistan must be regulated by the central Government and should not be left to individual States.

The provisions about Fundamental Rights and extension of jurisdiction of he Supreme Court also left much to be desired. The rights given to the State Legislature to abridge the fundamental rights of the people of the State under the excuse that a part of that State was under Pakistan's occupation, was not convincing at all. It only confirmed the genuine fears of the people in and outside the State that the State was sought to be run on totalitarian lines.

By leaving residuary powers with the State and abridging those which had been given to centre, the President's order had not succeeded in terminating the anomalous position of the State as a Unit of India. It had in it the germs of a danger which the Government of India ought to have visualised in the view of their recent experience.

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Mr. N.C.Chatterji, the President of Akhil Bharat Hindu Mahasabha, while pointing out[100] some lacunae in the State Constitution said that the defined function of the Supreme court of India in Kashmir was to achieve cohesion in the field of law and justice. The great drawback was that serious encroachment had been made both on civil liberties and on the sanctity of property, he added.

It was a matter of regret, he said that Article 136 of the Indian Constitution had not yet been applied to the State, and that no citizen of the State could apply to the Supreme Court for Special Leave against the judgement of local High Court.

Moreover, Article 19 of the Constitution of India which guaranteed basic human rights had been made practically mitigatory in Kashmir because of a special rider which made existing Legislation abrogatory of fundamental rights not questionable in the Court of Law. Again the denial of any compensation to expropriated owners practically amounted to naked confiscation and that was against the spirit of the Constitution of India.

The demand of the people of Jammu for provincial autonomy was ignored, he added. He further pointed out that even Hindi, the national language was not receiving due recognition.

The critics of the work of the State Consembly and the Constitution it was hammering into shape, were opposed to the special status and privileges accorded to J&K as a constituent unit of the Indian Union. In particular they did not approve of the curtailment of fundamental rights (as given in the Indian Constitution) in their application to the State; some restricts on the jurisdiction of the Supreme Court in relation to the State ; a dual citizenship for "permanent residents" of the State ; a blanket permission to return to the State, for the state' migrants to Pakistan ; distribution of land to the tillers, without any compensation to the owner thereof; the exclusion of the jurisdiction of the Union Election Commission over the State as also that of Auditor and Comptroller General of India; and the like[101].

REFERENCES

1. C.A.Debate Vol. III No.1 of 7th June, 1952 p.1.
2. Ibid.
3. Ibid, p.23.
4. Ibid.
5. Ibid.
6. Ibid, p.29.
7. A Flag issue, A Pamphlet issued by the Kashmir Bureau of nformation, New Delhi year not known P-VI.
8. Ibid, P.IV.

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9. Ibid,
10. Ibid.
11. C.A.Debate Vol. IV No.1 dated 11th August 1952 p.14.
12. The Statesman, New Delhi dated 22.6.1952.
13. C.A.Debates, Vol. VII No.1 dated June 7th 1952 p.29.
14. Ibid.
15. Ibid.
16. A Statement issued by Pt. P.N. Dogra President of All J&K raja Parishad dated 12.6.1952.
17. C.A.Debate Vol. III No.2 of 10th June, 1952 pp 45-48.
18. Ibid.
19. C.A.Debate, Vol. III NO.IV dated 12th June, 1952, p.37.
20. Organizer (Weekly) Vol. VI No.9 dated October 13,1952, p.12.
21. C.A.Debate Vol. VIII No.II dated 6th February, 1954, p.35.
22. C.A.Debate Vol. VIII No.II dated 4th Feb, 1954 p.6.
23. Ibid, pp 6-9.
24. C.A.Debate, Vol. VIII No. IV dated 6th Feb. 1954 p.12.
25. C.A.Debate Vol. VIII No. II dated 4th Feb,.1954.
26. Ibid.
27. Ibid, p.46.
28. C.A.Debate Vol.VIII No. III dated 5th Feb, 1954 p.9.
29. Ibid, p.7.
30. C.A.Debate Vol. VIII No.IV dated 6th February 1954, p.9.
31. Ibid.
32. Ibid,
33. Ibid p.48.
34. Prof. Balraj Madhok's Article "Kashmir Constitution Committee Report:Some unfortunate Laccunae" Organiser (Weekly) Vol. VIII No.27 dated Feb, 15, 1954, p.7.
35. Ibid,
36. Ibid,
37. Ibid.
38. C.A.Debate Vol VIII No.4 dated 6th Feb, 1954 p.35.
39. C.A.Debate Vol. V No.II dated 12th Nove, 1952, pp 5-7.
40. Ibid, pp 7-11.
41. Ibid, p.7.
42. Ibid, p.8
43. Ibid, p.11.
44. Ibid,
45. Ibid, p.11.
46. C.A.Debate Vol. VIII No.II dated 4th February 1954, p.3.
47. C.A.Debate Vol. VIIINo.IV date 6th Feb, 1954 p.35.
48. Ibid p.12.
49. C.A.Debate Vol. VIII No. II dated 4th 1954, p.19.

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50. C.A.Debate Vol. VIII No. III dated 5th Feb, 1954, p.14.
51. Ibid, p.46.
52. C.A.Debate Vol. VIII No. IV, dated 6th Feb, 1954, p.2.
53. Ibid,
54. Ibid, pp 3-4.
55. Organizer, New Delhi, Vol. VIII No.27 Feb 15,1952, pp 1-2.
56. Ibid,
57. C.A.Debate Vol. IV, No.4 dated 20th August, 1952, p 1-2.
58. C.A.Debate Vol. VIII No.5 dated 11th Feb. 1954, p.1.
59. C.A.Debate Vol. IV No.5 dated 21st Augst 1952, p.8
60. Ibid, p.1.
62. C.A.Debate Voo. IV No.5 date 20th August 1952, p.4.
63. Ibid, p.2.
64. Ibid pp 5-27.
65. C.A.Debate Vol. VIII No.VII dated 15th Feb, 1954 p.18.
66. Memorandum submitted to His Highness the President of Indian Union on 1.4.1954 on the Constitution set up of J&K State p.4.
67. Organizer (Weekly) New Delhi Vol. VII No.18 dated March 3, 1954, p.15.
68. Memorandum submitted to the President of India, Op.cit. pp 7-8.
69. Ibid, p.8.
70. Ibid, p.9.
71. Ibid, p.10.
72. Ibid, pp 9-10.
73. Ibid, p.11.
74. Ibid, p.12.
75. Ibid.
76. Ibid, p.12.
77. C.A.Debate Vol. VIII No.VI dated 13th February 1954, p.1.
78. Ibid,
79. Ibid,
80. Ibid, p.2.
81. C.A.Debate Vol. VIII No.VII dated 15th Feb, 1954, p.8-9.
82. Ibid, p.17.
83. Ibid, pp 17-18.
84. Ibid, p.19.
85. Ibid,
86. Ibid.
87. Ibid.
88. Ibid, p.20.
89. C.A.Debate Vol.IX, No.1 dated 16th April 1954,p.1.
90. Ibid, p.2.
91. Memorandum submitted to the President of India Opcit. p.12.
92. Ibid.

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93. Ibid, p.3.
94. Ibid, p.4.
95. Ibid,
96. A typed copy of Representation was found in Jana Sangh's Old files regard, Janasangh Head Office, Jammu.
97. The Memorandum bears the date 1.4.1954.
98. Office copy of the said lettr found in the old files of Jana Sangh Office, jammu.
99. Organizer (Weekly) New Delhi, Vol. VIII No.4 dated May 24, 1954, op.7.
100. Organizer (Weekly) New Delhi, Vol.VIII No.1 dated August 15, 1954, p.1.
101. Bhushan, Vidya:The State Politics and Government Jammu and Kashmir, Op.cit. pp 267-268.

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9

SYNOPTICAL OVERVIEW OF THE MAIN PROVISIONS OF THE DRAFT CONSTITUTION OF JAMMU AND KASHMIR ALONG WITH TWO NOTES OF DISSENT AS INTRODUCED IN CONSTITUENT ASSEMBLY ON OCTOBER 9,1954

It is in the fitness of the things that after the considerations of the reports of the committees by the Consembly attention should be focused on the Draft Constitution prepared by the Drafting Committee. It does not, however, mean that the reports of the committees were incorporated verbatim in the Draft Constitution or that their recommendations were most faithfully followed while drafting the constitution. Their real significance lies in the fact that they constituted the chief source of material for the constitution of Jammu and Kashmir State.

9.1. The Draft Constitution

On behalf of the Drafting Committee appointed by the Resolution of the Consembly dated October 20,1953, Mr. G.L.Dogra-its Chairman had submitted the Draft of the Constitution of Jammu and Kashmir, as settled by the Committee along with two notes of dissents to the Constituent Assembly.

In preparing the Draft, the Committee had endeavoured to incorporate in it as far as possible the directives contained in the Reports of the Basic Principles committee and the Advisory committee on Fundamental Rights and Citizenship, as adopted by the Consembly on February 6,1954 and such other decisions as were taken by the Consembly from time to time.

The Committee, however, ventured to suggest that the provisions in Part VII, relating to the judiciary, which were in accordance with the directives contained in the Basic Principles Committee's report in this behalf might be altered to the extent that the powers of appointment and removal of High Court Judges be vested in the President. In the opinion of the Committee this procedure would inspire people with greater confidence in its independence and impartiality.

With regard to chapter on Legislature, the Drafting Committee had envisaged the creation of the Legislative/Council. It was suggested that consideration might be given to the desirability of ensuring representation in it of all the weaker sections including the Sikh.

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9.2. The Main Provisions of the Draft Constitution

The Draft Constitution of the Jammu and Kashmir which comprises of one hundred fifty eight sections and six schedules contains the preamble and thirteen other parts.

The preamble to the Constitution not only reaffirmed the accession of the State to the Indian Union but like almost all the modern constitutions of the world, lays down in clear and unambiguous terms that the people of the state are the final source of authority and the state is to achieve the welfare of the individual. The preamble reads[1] :

WE, THE PEOPLE OF THE STATE OF JAMMU AND KASHMIR, having solemnly resolved, in pursuance of the accession of this State to India which took place on the twenty-sixth day of October, 1947, to further define the existing relationship of the State with Union of India as an integral part thereof, and to secure to ourselves-

JUSTICE, social, economic and political ;

LIBERTY of thought, expression, belief, faith and worship ;

EQUALITY of status and opportunity; and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity of the Nation ;

IN OUR CONSTITUENT ASSEMBLY this ___ day of ___, 1956, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION".

Part I **Preliminary** of the Constitution, comprising sections 1 and 2 deals with the short title, its commencement and the definitions of the various terms used in it[2].

Part II **(The State)** of the Constitution comprising sections 3, 4 and 5 defines the relationship of the State with the Union of India and the territory of the State. The State is and shall be an integral part of the Union of India and its territory shall be the same as on August 15, 1947 under the sovereignty or suzerainty of the Ruler of the State[3].

Part III **(Permanent Residents),** comprising sections from 6 to 10 defines the permanent residents of the State. Every person who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State, if on the 14th of May, 1944 he was a state subject of Class I or of Class II or having lawfully acquired immoveable property in the state, he has been ordinarily resident in the state for not less than 10 years prior to that date. Any person who, before the fourteenth day of May, 1954, was a State Subject of Class I or of Class II and who, having migrated after the First day of March, 1947, to the territory now included in

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Pakistan, returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State legislature shall on such return be a permanent resident of the State. The permanent residents shall have all the rights guaranteed to them under the Constitution of India. Amendment in the definition of the permanent residents of the State can be made by a majority of not less than 2/3rd of the total membership of either house[4].

Part IV **(Directive Principles of State Policy)** comprising sections from 11-25 deals with the directive principles of the State Policy[5]. The prime object of the State shall be the promotion of the welfare of the mass of the people by establishing and preserving a socialist order of society wherein all exploitation of man has been abolished and wherein justice-social, economic and political -shall inform all the institutions of national life. The State shall endeavour to organise and develop Agriculture and Animal Husbandry, take steps to organise Village Panchayats and guide and promote the renowned crafts and cottage industries of the State. The State shall take steps to separate the judiciary from the executive and shall, within the limits of its economic capacity and development, make effective provisions for securing to all permanent residents the right to work; reasonable, just and humane conditions of work assuring full enjoyment of leisure and cultural opportunities; maintenance in old age as well as in the event of sickness, disablement, unemployment and other cases of undeserved want, by providing social insurance, medical aid, hospitals, sanatoria and health resorts at State expenses for all working men and women; protection for the strength and health of workers, men and women and the tender age of children from being abused. The State shall endeavour to secure to every permanent resident the right to free education upto the University standard and to provide within a period of 10 years from the commencement of the Constitution compulsory education for all children until they complete the age of 14 years and ensure to all workers and employees adequate facilities for adult education and part-time technical, professional and vocational courses. The Constitution places women at par with men and guarantees to the socially and educationally backward section of the people special care in the promotion of their educational, material and cultural interests and protection against social injustice. The state shall combat ignorance, superstition, fanaticism, communalism, racialism, cultural backwardness and shall seek to foster brotherhood and equality among all communities under the aegis of a secular State[6].

Part V[7] **(The Executive)** comprising sections from 26 to 45 defines the executive. The Head of the State shall be the Sadar-i-Riysast. He shall be a permanent resident of the State and shall not be less than 25 years of age and

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shall be elected by the Legislative Assembly by a majority of the total membership of the Assembly. He shall hold office during the pleasure of the President. The term of the office shall be five years. He shall not hold any other office of profit and may be removed from his office by the President if an address by the Legislative Assembly supported by a majority of not less than 2/3rd of its total membership is presented to the President praying for such removal on the ground of violation of the Constitution. The Sadar-i-Riyasat shall have the powers to grant pardons, reprieves etc. The Council of Ministers shall work on the basis of joint responsibility. There shall be an advocate General appointed by the Sadar-i-Riysasat to give advice to the Government upon legal matters. He shall hold office during the pleasure of the Sadar-i-Riysasat.

Part VI **(The Legislature)** comprising sections 46 to 92 deals with the Legislature. There shall be two Houses known as the Legislative Assembly and the Legislative Council[8]. The Legislative Assembly shall consist of 100 members chosen by direct election. 25 seats of Legislative Assembly shall remain vacant for the area under Pak occupation. For the scheduled castes as many seats as are proportionate to their population of the State shall be reserved for a period of 5 years from the commencement of the constitution. The Legislative Council shall consist of 36 members. 11 members shall be from the Province of Kashmir including one from Ladakh District and 11 from the province of Jammu including one Doda District and one from Poonch District. One member shall be elected by the members of the Municipal Committees, Town Area Committees and Notified Area Committees in the Province of Kashmir and one by similar institutions in the Jammu Province. 2 members will be elected by permanent residents engaged for at least 3 years in teaching in recognised educational institutions- one each from the provinces of Jammu and Kashmir. 2 members shall be elected by the members of Panchayats and other local bodies specified by the Sadar-i-Riyasat from the Province of Kashmir and two from the Province of Jammu. 6 members shall be nominated by the Sadar-i-Riyasat including 3 belonging to any of the socially and economically backward classes in the State and the rest shall be persons having special knowledge and practical experience in respect of matters such as literature, science, art, cooperative movement and social service[9].

The Legislative Assembly shall continue for 5 years while the Legislative Council shall not be subject to dissolution, but 1/3rd of its members shall retire on the expiration of every second year. Each House of Legislature shall be summoned and prorogued by the Sadar-i-Riyasat. The Legislative Assembly shall have a Speaker and Deputy Speaker and he Legislative

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Council a Chairman and a Deputy chairman. There shall be freedom of speech in the Legislature. A Money Bill shall not be introduced in the Legislative Council. The Sadar-i-Riyasat shall have the power to promulgate ordinances during recess of legislature.

In the event of failure of the constitutional machinery in the state, the Sadar-i-Riysasat shall, by proclamation issued with the concurrence of the President of India assume to himself all or any of the functions of the Government[10];

Part VII **(The Judiciary)** comprising sections from 93 to 113 deals with the judiciary. The High Court for the State shall consist of a Chief Justice and 2 or more other judges to be appointed by the Sadar-i-Riyasat. The High Court shall be a court of record and shall have powers of such a court including the power to punish for contempt of itself. Every person who is a citizen of India and has for at least 10 years held a judicial office or has been for at least 10 years an advocate of a High Court shall be qualified for appointment as a Judge of the High Court. The usual places of sitting of the High Court shall be at Jammu and at Srinagar. Appointment of District Judges shall be made by the Sadar-i-Riyasat in consultation with the High Court and subordinate judges in accordance with the rules made by him in that behalf after consultation with the Public Service Commission and the High Court[11].

Part VIII, **(Finance, Property, Contracts and Suits)** comprising section from 114 to 123 deals with Finance, Property and Contracts viz. Taxes not to be imposed save by authority of Law; Consolidated Fund and Public Account; Contingency Fund: Expenditure defrayable by the state out of its revenues; custody etc. of Consolidated Fund; Contingency Fund and moneys credited to the public account; custody of suitor's deposits and other moneys; property occurring by escheat, or lapse or as bona vacantia; powers to carry on trade etc; contracts and suits and proceedings.

Part IX **(The Public Services)** comprising section 124 to 137 deals with Public Services and the Public Service Commission.Every member of the civil service or holding any civil post under the State shall hold office during the pleasure of the Sadar-i-Riyasat . No person shall be dismissed, removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him[12]. There shall be a Public Service Commission consisting of a Chairman and other members appointed by the Sadar-i-Riyasat. A member of the Commission shall hold office for a term of 5 years only, until he attains the age of 60 years whichever is earlier. The Commission shall conduct examinations for appointments to the services of the State and shall be

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consulted on all matters relating to methods of recruitment to civil services and for civil posts, on the principles to be followed in making appointments, promotions and transfers and on all disciplinary matters in respect of civil servants[13].

Part X **(Elections)** comprising sections from 138 to 142 deals with Elections. The superintendence, direction and control of the preparation of the Electoral rolls for, and the conduct of the elections shall be vested in an Election Commissioner to be appointed by the Sadar-i-Riyasat. The election to the Legislative Assembly shall be on the basis of adult suffrage and the minimum age of a voter shall be 21 years[14].

Part XI **(Miscellaneous Provisions)**, comprising of sections from 143 to 146 deals with miscellaneous provisions such as protection of Sadar-i-Riyasat, Flag of the State, Official Language of the State and Academy for development of Art, Culture and Languages.

The official language of the State shall however be Urdu, but the English language shall, unless the Legislature by law otherwise provides, continue to be used for all official purposes of the State[15].

The Constitution also provides for the establishment of an Academy of Arts, Culture and Languages where opportunities will be afforded for the development of art and culture and for the development of Hindi, Urdu and other regional languages of the State, namely, Dogri, Kashmiri, Ladakhi, Balti, Dardi, Punjabi and Pahari[16].

Part XII **(Amendment of the Constitution)** comprising section 147 deals with the amendment of the Constitution. The Constitution can be amended by the introduction of a Bill in the Legislative assembly and passed in each House by a majority of not less than 2/3rd of the total membership of that House. But no Bill or amendment seeking to make any change in the provisions relating to the relationship of the State with the Union of India, the extent of executive and legislative powers of the State or the provisions of the constitution of India as applicable in relation to the State shall be introduced or moved in either Houses of the Legislature[17].

Part XIII **(Transitional Provisions)** comprising section from 148 to 158 deals with transitional provisions pertaining to Sadar-i-Riyasat, Council of Ministers ; provisional legislature; pending bills ; constituting the first Legislative Assembly ; Judges of High Courts; Courts, authorities and officers to continue to function subject to the provisions of the constitution ; Money received or raised or expenditure incurred between commencement of the Constitution and the 31st day of March, 1957; power of Sadar-i-Riyasat to remove difficulties ; repeal and saving of laws and rules and interpretation of the Constitution[18].

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Schedules :

The Ist schedule deals with the methods of election to the office of Sadar-i-Riyasat, **Schedule 2nd** provides for the emoluments, allowances and privileges of the Sadar-i-Riyasat. The emoluments of the Sadar-i-Riyasat shall be Rs. 5,500/- per month. **Schedule 3rd** deals with the salaries and allowances of the Speaker, the Deputy Speaker, the Chairman and the Deputy Chairman. The **4th schedule** deals with the salaries and allowances of the Judges of the High Court[19]. The Chief Justice will get Rs. 2500/- per month and the judges of the High Court Rs. 2,000/- per month each. The **5th schedule** deals with forms of Oaths or Affirmation. The **6th schedule** pertains to the Regional Languages of the State[20].

9.3. Notes of Dissents

9.3.1. Note of Dissent by S. Harbans Singh Azad

I append a Note of dissent to the Draft Constitution on the following points:

1. I had recommended to the Drafting Committee to make provision for reservation of seats for Sikhs, for a specified period, in the Legislative Assembly. This I did in the light of the recommendation of the B.P.C. contained in para 8 of the said report:

"Provision will have to be made for a fixed period to promote with special care the interests of weaker sections of the people by ensuring their representation in the Assembly. But the majority of the members of the Committee opine that reservation of seats for Sikhs will not be in keeping with the democratic structure of our Draft Constitution".

I recommend that at least a specified number of seats, at least one from each province of Jammu and Kashmir be reserved for Sikhs.

Clause 53 will have to be amended as follows :

Add one more provision to clause 53-sub clause-2

Provided further at of the members so elected at least one shall be a Sikh who is a resident of Kashmir province.

Provided further that of the members so elected at least one shall be a Sikh who is a resident of Jammu province.

2. The composition of the Legislative Council should be more democratised. The number of members elected by the Assembly be reduced and that of members elected by direct votes and democratic institution be correspondingly increased. The total membership of the Council, if agreed to be created, should not exceed thirty.

3. It would be more desirable to specify the "socially and economically backward classes of the State so that their representation in the Legislature is ensured in a precise manner.

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I commend these points for the consideration of the Assembly.

Srinagar,
P.L.Gupta
10th Oct, 1956 Secretary

9.3.2. Note of Dissent in Respect of Section 50 of the Draft Constitution

"1. The Legislative Council shall consist of thirty members, chosen in the manner provided in this section.

2. Substitute "ten" for "eleven".

3. Substitute "ten" for "eleven".

4. Will stand as in the Draft.

5. Two members shall be elected by the members of Panchayats of the Kashmir Province and two members by the members of Panchayats of the Jammu Province and two more members shall be nominated by the Sadar-i-Riasat for a period of ten years from among the minority communities, one from the Kashmir Province and the other from the Jammu province.

Note : Item No 2 and 3 should contain mandatory provisions for electing two members from backward classes from each of the two provinces".

Ghulam Nabi Lolabi
Member Constituent Assembly.

REFERENCES

1. The main provisions of the Draft Constitution of the State-Issued by Government of Jammu and Kashmir, Srinagar, October 10,1956,m p.1.
2. Ibid.
3. Ibid.
4. Ibid.
5. Ibid.
6. Ibid.
7. Ibid, p.3.
8. Ibid.
9. Ibid, p.4.
10. Ibid.
11. Ibid. p.5.
12. Ibid.
13. Ibid.
14. Ibid.
15. Iid.
16. Ibid, p.6.
17. Ibid.
18. The J&K Constitution 1957, pp 93-99.
19. The Main Provision of the Draft Constitution of the State, Op.cit. p.6.
20. Ibid.

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10

CONSTITUTION ON THE ANVIL

After the submission of Draft Consitution and its consideration by the Constituent Assembly, the actual task of framing the Constitution was taken up with all the vigour and logic possible. The first stage arrived when the reports of the various Committees were considered and adopted. The second stage comprised the consideration the Draft Constitution by the Constituent Assembly. After the completion of the second stage, the drafting committee again reviewed the Draft Constitution as it emerged from the Constituent Assembly. Then, followed the final and the Third Stage (*i.e.*, Third Reading) viz. delivering speeches by the members high lighting the merits and demerits of the constitution. There after the Constitution was approved by the Constituent Assembly, every member signing it by way of assent.

Keeping the above process in view, it would be desirable to take up the consideration of the Draft Constitution as well as its important aspects by the consembly and to find out how they ultimately asumed their existing shape and texture, having under gone enough hammering from all corners.

10.1. Consideration of The Draft Constitution

Mr. G.L.Dogra, the Chairman of Drafting Committee- while submitting the Draft Constitution with the two notes of dissent to the Consembly on 9th October, 1956[1] highlighted its fundamental principles viz. parliamentary democracy, responsibility of the Executive to the Legislature; Joint responsibility of the Cabinet, separation of the various powers of the State *i.e.* Executive, legislative and Judicial; and finally the Rule of Law[2]. It laid down what the future relation of the State with India would be. Its basic feature was that the State was an integral and inalienable part of India and would ever remain so[3]. All those powers which of necessity must belong to the Centre had been given to the Union Government[4]. Moreover, all those powers which were already with the Centre, had been left as such[5]. In other words they had transferred only those subjects to the Centre which, by their very nature, ought to belong to the Centre and in the remaining ones they had complete autonomy[6]. The Draft mentioned that the State would consist of all those territories which had been under the sovereignty or suzerainty of the Ruler of the State till 1947[7]. Thus the unity and integrity of the State had been maintained.

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policy had also been added to the Draft Constitution[11]. Through these principles- the State would combat ignorance, superstition, fanaticism, communalism, racialism, cultural backwardness and should seek to foster brother hood and equality among the communities under the aegis of the secular State[12].

There would be a head of the State known as the Sadar-i-Riyasat. He would be elected by the Legislature of the State. A candidate would have to obtain a definite majority votes of the Assembly and be recognised by the President of the Union[13]. There was also a procedure for the removal of Sadar-i-Riyasat from his office, if he was found guilty of violating the provisions of the Constitution[14]. In addition to Council of Ministers, it provided for an Advocate General for the State[15].

So far as Legislature was concerned, the Draft Constitution recommended a bicameral Legislature for the State[16]. The lower house-the Legislative Assembly-would be composed of 100 members[17], 25 seats out of the total number being reserved for that part of the State which was under enemy occupation[18]. The upper house- the Legislative Council would be composed of the representatives of various groups, institutions as well as the weaker sections of the State[19].

So far as judiciary was concerned it had been separated from the Executive[20]. If Executive would deviate from the principle set down in the Constitution the judiciary was there to guarantee justice[21]. The judges of the High Court would be appointed by the Sadar-i-Riyasat. But it was left to the House to decide whether in the interest of inspiring the people with greater confidence in the independence of judiciary of the High Court it was advisable that the appointment of the High Court Judges by the Sadar-i-Riyasat be made subject to the confirmation of the President of India. If the House could make a recommendation to that effect[22], every citizen could approach High Court with confidence to obtain justice or get his grievances redressed.

So far as the finances of the State were concerned it had been recommended that all the revenues be paid into the State treasury and that without the authorization of the Legislature no amount, however, small be withdrawn from the consolidated fund of the State[23].

The Draft Constitution provided for the setting up of a Public Service Commission[24], Election Commission[25], Procedure for the amendment of the Constitution[26], provision against constitutional break down[27] and provisions for carrying on the functions of the Government during the transitional period[28].

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The Auditor General of India would audit the account of the State and would submit his report through the Sadar-i-Riyasat of the State for being discussed by the House[29].

The method of Election, emoluments, allowances and privileges of the Sadar-i-Riyasat, salaries, allowances of the Speaker and the Dy. Speaker of the Legislative Assembly, the Chairman and Dy. Chairman of the Legislative Council, the judges of the High Courts, forms of oaths or affirmation, and regional languages were shown in separate six schedules attached to the Draft Constitution[30].

S. Kulbir Singh while supporting the Draft, highlighted its features and said that except one of two items in the draft all other provisions were praise worthy. He added that no attention had been paid to prohibition; no clause, except reservation of some seats, in the Constitution existed to remove the grievances of the highly backward Sikh community[31]. Mr. Mir Qasim while seconding the motion pointed out that so far as the notes of dissent were concerned, there were no fundamental dividing points. They had differed from the majority on the question of number of the members of the House, he added. Mr. M.A.Beg wanted to move an adjournment motion that the house be adjourned for a period of two weeks to give government adequate time to arrange the presence in the House, of Sheikh Mohd Abdullah, then under detention[32]. As the adjournment motion did not satisfy the requirement of rule 26 the President did not allow mover to move the motion[33]. Mr. Mubarik Shah also moved a similar adjournment motion i.e. to adjourn the House for a period of two weeks to enable the members, released from jail two days before, to study the Draft Constitution[34]. While rejecting it the President pointed out that it was not an adjournment motion but a motion for adjournment of the consideration of the Draft Constitution which was at that time under discussion. Therefore, he added, with regard to such motion there was no such rule or limitation that a certain member or members should study the motion and then alone discuss it[35]. Mr. Beg pointed out that House had lost its representative character and that it was not competent to frame Constitution, nor could it take any decision in regard to accession of the State. He, therefore, along with Mr. Abdul Ghani Goni, Mr. Ghulam Rasool Raina, Mr. Ghulam Nabi Badgami, Mubarik Shah, Mr. Ghulam Mohd. Beg and Hakim Habibullah walked out[36]. Mr. Krishan Dev Sethi while supporting the motion made the following suggestions[37]:

1. It is essential to fix up a time limit for providingemployment to the people;

2. The wide powers proposed to be given to the Sadar-i-Riyasat should be limited;

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3. The right of the permanent residents should be safeguarded, but at least right to vote should be granted to such people who come here for trade and live in the State for at least six months;

4. Seats should be reserved for scheduled tribes as well, in the way these have been reserved for the scheduled castes; and

5. The services should be made secure the way these have been made secure in India; and finally we must grant provincial autonomy to various Constituent Units of the State.

Mr. Qasim in his lengthy speech criticise the walkout staged by Mr. M.A.Beg[38] and asserted that in drafting the Constitution they had followed the policy of the New Kashmir Programme. Bakshi Ghulam Mohd. while supporting the Draft Constitution, referred to the history of struggle for freedom in Kashmir and disapproved the action of Mr. M.A.Beg[39]. Mr. G.L.Dogra then moved that the Draft Constitution of Jammu and Kashmir settled by the Drafting Committee be taken into consideration[40]. Mr. S.L.Saraf seconded it[41]. After five days of discussion, the Draft Constitution, without any amendment, was put to the House and adopted unanimously[42]. Thus the first reading of the Draft Constitution was over when the reports of the various Committees were considered and adopted.

There were a number of issues and controversies the answer of which could not be found in the C.A.debates, reports and other relevant material available. An attempt, therefore was made to find the same through interviews of the then living members. The first question was whether decisions in the committee meetings were arrived at after free and frank discussions. Their individual responses varied and as many as five distinct categories of responses were listed as shown in Table.

Table : 6

Whether Decisions in the Committee were Arrived at After Free and Frank Discussions ?

S.No.	Categories of Responses	No. of Members	Percentage
1.	Yes	28	70.00
2.	No	7	17.50
3.	Do not know	1	2.50
4.	Refused to reply	2	5.00
5.	Any other[43]	2	5.00
	Total	40	100.00

70.00 per cent of the members were of the opinion that the decisions in the committee meeting were arrived at after free and frank discussion; whereas 17.50 per cent of the respondents replied in negative. 2.50 per cent

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respondents expressed their ignorance about it and 5.00 per cent refused to reply to this question. 5.00 per cent of them did not agree with any one of above listed categories, and hence were grouped under "any other category".

Another question was whether the decisions were made outside the committees and the committees simply confirmed them. The individual responses varied and as many as the six responses were listed as shown in the Table.

Table : 7

Whether Decisions were Made Outside the Committees and the Committees Simply Confirmed them ?

S.No.	Categories	No. of Members	Percentage
1.	Yes	17	42.50
2.	No	18	45.00
3.	The basic policies were laid down by the party	1	2.50
4.	Sometimes made outside	1	2.50
5.	Don't know	3	7.50
	Total	40	100.00

42.50 per cent respondents answered in affirmative whereas 45.00 per cent in negative. 2.50 per cent members were of the view that the basic principles were laid down by the party. An equal percentage of the respondents pointed out that sometimes decisions were made outside the committees. 7.50 per cent respondents expressed their ignorance in this respect.

If the decisions were made outside and the committees simply confirmed them the obvious question would be at what level these decisions had been made. The individual responses are classified under the following four categories mentioned in Table.

Table : 8

If the Decisions were Made Outside and the Committees Simply Confirmed them, at What Level these Decisions were Made ?

S.No.	Level at which	No. of Members	Percentage
1.	At National Conference Party meetings.	5	29.42.
2.	Made up by two or three important leaders	10	58.83
3.	National Conference Working Committee	2	11.76
4.	Any outside agency	Nil	00.00
	Total	17	100.00

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Of those whose responses were taken, 29.42 per cent respondents mentioned that at National Conference Party meeting level the decisions were made. Whereas 58.83 per cent of them pointed out that the decisions were made up by two or three important party leaders. But 11.76 per cent of the respondents were of the view that the decisions were made at the National Conference working committee level.

Another issue was the number of draft constitutions other than the final draft (submitted to the C.A.) presented to the drafting committee[44]. The researcher tried to get answers from the respondents. The individual responses were classified as given in Table

Table : 9

Number of Draft Constitutions Other than the Final Draft Submitted to the Consembly.

S.No.	Number of Draft Constitutions	No. of Persons	Percentage
1.	One	Nil	0.00
2.	Two[45]	1	33.33
3.	Three	Nil	00.00
4.	More	Nil	00.00
5.	No other draft	1	33.34
6.	Do not remember	1	33.33
	Total	3	100.00

33.33 per cent respondents mentioned that two draft constitutions, other than the final draft constitution, were submitted; whereas 33.33 per cent respondents denied outright the submission of any other than the final draft constitution. 33.34 per cent of the respondents did not remember and could not reply.

Nine of the respondents who were not even the members of the drafting committee also gave their opinion in this regard. The researcher has classified this data separately as shown in Table.

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Table : 10

Opinion of the Members Who were not Even the Members of the Drafting Committee

S.No.	Number of Drafts other than the final Draft Constitution	Number of members	Percentage
1.	One	6	66.66
2.	Two	1	11.11
3.	Different points and issues were raised but ultimately there was one (final) draft	1	11.11
4.	Number of draft constitutions	1	11.12
	Total	9	100.00

66.66 per cent of the respondents were of the view that only one draft constitution was submitted to the drafting committee and that the final draft was nothing but the modified form of the very draft. 11.11 per cent of the respondents were of the view that two draft constitutions-the "Naya Kashmir" and "The Constitution of India", other than the final draft constitution were submitted and discussed. 11.11. per cent of the respondents were of the view that the different points and issues had been raised but that ultimately there had been one (final) draft constitution; whereas 11.12 per cent of the respondents pointed out that a number of draft constitutions were submitted, which were considered, amended, scrapped and ultimately the final draft constitution emerged.

What were the broad features of these constitutions, submitted to the drafting committee for consideration, was another relevant inquiry to be made of those who replied in the affirmative. Only 12.50 per cent (5) of the respondents could throw light on this aspect. But none of them had been the member of the drafting committee. According to 20.00 per cent of the respondent the broad features were that all Districts of Jammu and Kashmir State should be given internal autonomy and that a district had powers to join another district within a period of ten years. 20.00 per cent of the respondents mentioned a draft with federal structure: the State to be divided into five regions- Jammu, Kashmir, Ladakh, Pahari Region and a region comprising Mirpur district and Plandri. The Pahari region to consist of Bagh, Muzaffarabad, Poonch and Rajouri. Each region to be given larger autonomy. 20.00 per cent of the respondents pointed out another similar federal structure- a federation with a federation: Jammu, Kashmir and Ladakh

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to have separate development Councils to take care of the progress of their respective regions. 20.00 per cent of the respondents mentioned still another similar federal structure providing complete regional autonomy to all the three regions of the State. Rest 20.00 per cent of the respondents pointed out that a draft Constitution had been prepared by the Constitutional adviser to C.A. (Justice Shamiri) acting under the guidance of Sheikh Mohammaed Abdullah and Mr. M.A.Beg. The main features of the draft constitution were as under:

1. There should be a district council or Assembly in each district. It was to be elected on the basis of adult franchise. The Council or Assembly would deal with the district affairs. The administrative head of the district would be a deputy commissioner. He had to run the administration in accordance with the decisions in the Council or Assembly and directions of the Centre.

2. At the Centre level there would be a National Assembly under the leadership of the Prime Minister. The head of the State would be Sadar-i-Riyasat.

3. It would be an independent State, federal in nature and having friendly relations with the neighbouring States.

4. The draft constitution promised progressive steps such as land reforms, village uplift etc. etc.

10.2. Second Reading of the Draft Constitution

The second reading of the draft constitution started on October 29, 1956[46] and completed on November 10,1956[47]. The various draft amendments which figured in course of the second reading can be broadly classified in the following five categories:

1. Amendments moved, discussed and adopted;
2. Amendments discussed and rejected by the House;
3. Amendments moved but withdrawn by the mover after discussion;
4. Amendments standing against the name of the members but not oved at all on account of either their absence or their dropping the move; and
5. Amendments moved but not discussed as none seconded them.

10.2.1. Amendments Moved, Discussed and Adopted

A perusal of the debates in the Kashmir Consembly reveals that the number of draft amendments in this category was nine.

One of the draft amendments related to the subject matter contained in clause 19 of the part IV (The Directive Principles of the State Policy) of the draft constitution[48]; broadly covering the right to work, just and humane

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conditions of work, right to maintenance in old age as well as in the event of sickness, disablement, unemployment and other cases of undeserved want. The mover[49] claimed that the main purpose of the amendment was to clarify the wording of draft clause 19 and to extend the benefit of the sub clause (*b*) and (*c*) of the directive to workers who might not be permanent residents of the State.

The amendment was adopted in its entirety[50] and figured as section 19 of the Constitution[51].

The next amendment pertained to clauses 94,95,99,100 and 108 of Part VII(The High Court) of the draft constitution[52]. In clause 94, the words 'or of the Court subordinate to it' were added at the appropriate place[53]. In clause 95, the amendment proposed that the Judge or Chief Justice of the State High Court should be appointed by the President of India, after consultation with the Chief Justice of India, the Sadar-i-Riyasat and in case of an appointment excepting Chief Justice, the Chief Justice of the State[54]. In clauses 99 and 100 the word 'President' was substituted for the word 'Sadar-i-Riyssat'[55]. In clause 108 sub clause (i) for the words 'Chief Justice of the Court or such other judge or officer of the Court as he may direct' were substituted. These amendments have since then taken their place in section 94,95,99,100 and 108(1) of the Constitution[56].

The next amendment was concerned with sub clause (4) of the clause 133 of Part IX (The Public Services) of the draft Constitution[57]. Clause 133 dealt with the function of the Public Service Commission[58]. In sub clause (4) of clause 133 of the draft constitution for the words 'both Houses' the words 'Legislative Assembly' were substituted[59]. The mover claimed that the amendment was necessitated in order to remove a case of disagreement between the two Houses of the Legislature[60]. The amendment was adopted in its entirety[61] and then figured as section 133(4) of the Constitution[62].

The fourth amendment pertained to clause 92 of Part VI (The Legislature) of the draft Constitution[63], and dealt with the provisions in case of failure of the Constitutional machinery in the State. The amendment was to add a new sub clause (6) in clause 92 so that if and when an emergency proclamation[64] was issued it could be laid before the Legislature for discussion[65]. The amendment was adopted[66] and figured as section 92(b) of the Constitution[67].

The fifth amendment was concerned with clause 147 of Part XII(Amendment of the Constitution) of the draft Constitution[68]. The mover stated that the amendment included the procedure for the abolition of the Legislative Council[69].

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Taking the form of a proviso, the amendment laid the procedure according to which a bill to abolish the Legislative Council was to be introduced in the Legislative Assembly and passed majority of the totals membership of the House- not less than two thirds of the members present and voting[70]. The amendment put the words 'provided further that' in the proviso of the draft clause 147, the change being incidental to the incorporation of a new proviso in this amendment[71].

The sixth amendment was related to sub clause (1) of clause 152 of Part XIII of the draft Constitution, which dealt with the special provision for constituting the first Legislative Assembly[72]. The mover pointed out that the object of the amendment was to empower Sadar-i-Riyasat, that if he so liked, he could combine one constituency with the other and re-adjust or make minor alterations in the then existing constituencies[73]. He, therefore, proposed that in clause 152(1) the following changes be made[74] :

1. in sub clause (*a*) the word 'and' be deleted ;
2. in sub clause (*b*) the word 'and' be added at the end ;
3. after sub clause (*b*) the following clause be inserted :

"(*c*) for re-adjusting, changing or altering such of the existing Constituent Assembly constituencies as may be deemed necessary ; and

4. after words 'so modified' the words 're-adjusted' changed or altered' be inserted.

The amendment was adopted[75] and figured as section 152(1) of the constitution[76].

The seventh amendment was concerned with para 2 of the third schedule of the draft constitution, which dealt with the salaries and allowances of the deputy-speaker of the Legislative Assembly and he deputy-Chairman of the Legislative Council[77]. The mover[78] claimed that the proposed amendment aimed that whereas the deputy speaker of the Legislative Assembly would be paid as much salary and allowances as were payable to him immediately before the commencement of the Constitution, the salary and allowances of the deputy Chairman of the Legislative Council would be determined by the Sadar-i-Riyasat[79].

The amendment on adoption[80] took its position as para 2 of the schedule of the constitution[81].

The object of the eighth amendment, according to its mover[82] was to specify the date of adoption of the constitution in its preamble itself[83]. Accordingly, the amendment incorporated seventeenth day of November, 1956 in the preamble[84].

The purpose of the final-the ninth-amendment, according to its mover[85] was to get the date of commencement of the constitution incorporated therein by the Consembly. It provided that whereas clauses of an urgent

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nature such as clause 1 to 8 of 158 would take effect immediately, the rest of the Constitution would be deemed to have commenced on twenty sixth day of January 1957[86]. On adoption[87], the amendment took its position as clause (2) of section 1 of the Constitution[88].

10.2.2. Amendments Discussed and Rejected by the House

In the second category there was one draft amendment according to which the mover[89] wanted clause 44 of the draft constitution to include a provision making it a duty on the part of the Sate's Prime Minister to inform the Sadar-i-Riyasat annually or at half yearly intervals of the percentage of the scheduled castes in the civil services of the State. The amendment was discussed and turned down[90] by the House as, in course of discussion it was pointed out that the subject of the amendment was already implicitly covered in the aforesaid clause[91]

10.2.3. Amendments Moved but Withdrawn by the Movers after Discussion

In the third category as many as fifteen amendments were discussed by the House and they were all withdrawn by their movers[92].

The movers of these amendments were:

Table : 11

Amendments Moved but Withdrawn by the Movers after Discussion

Numbers of Amendments	Name of the mover/movers of this category
Ist	Mr. Ram Piara Saraf
2nd	Mr. Abdul Khaliq Butt.
3rd	Mr. Ram Piara Saraf
4th	Mr. Mohd Ayub Khan
5th to 7th	Mr. Ram Piara Saraf, Master Ghulam Ahmed and Kotwal Chuni Lal
8th	Mr. Mansukh Rai
9th	Mr. Mansukh Rai
10th	S.Kulbir Singh
11th and 12th	S.Harbans Singh Azad
13th	Raja Mohd Afzal Khan
14th	Mr. Chhajju Ram
15th	Mr. Mohd Ayub Khan

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10.2.4. Amendments Standing against the Name of the Movers but not Moved at all on Account of Either their Absence or their Dropping the Move

In the fourth category, we find twenty four amendments which could not materialise for the reason that either members, against whose name they were standing, happened to be absent from the House or they dropped the move[93].

The movers of these amendments were as under:

Table : 12

Amendments standing against the Name of the Movers but not moved at all on account of either their absence or their dropping the Move.

No. of amendments	Name of the mover/movers of fourth category
Ist	Mrs. Ishar Devi Mani.
2nd	Mr. Mansukh Rai
3rd	Mr. Bhagata Ram Sharma
4th	Mr. Ram Piara Saraf
5th	Mr. Mohd Ayub Khan
6th	Mr. Mansukh Rai
7th	Mr. Abdul Khaliq Bhat
8th	Mr. Ram Piara Saraf
9th	Sayed Ali Saifi.
10th	SheikhGhulam Rasool
11th	Mr. Ram Piara Saraf
12th	Mr. Mansukh Rai
13th	Mr. Mohd Ayub Khan
14th	Mr. Ghulam Ahmed Dev
15th to 17th	Mr. Mansukh Rai
18th to 19th	S.Kulbir Singh
20th to 21st	Mr.Ram Chand Khajuria
22nd	Mr. Mansukh Rai
23rd	Mr. Ayub Khan
24th	Mr. Ram Piara Saraf

10.2.5. Amendments Moved but not Discussed as none Seconded them

In the fifth category two amendments were moved but there was none to second them and hence these could not be discussed[94].

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10.2.6. Miscellaneous

In the sixth and the last category there is one solitary case of a amendment which, according to the records was moved, seconded an discussed but not shown whether it was withdrawn or voted down o discussion. The fate of this case, thus remains obscure and unknown.

The following table deals with the various draft amendments and pu them in quantitative and analytical perspective.

Table : 13

Complete Break up of the various Amendments During Second Reading

S.No.	Nature of the draft Amendments	Number	Percentage
1.	Amendments moved, discussed and adopted.	09	17.31
2.	Amendments discussed and rejected by the House.	01	1.92
3.	Amendments moved but with-drawn by the mover after discussion.	15	28.85
4.	Amendments standing against the name of the mover but not moved at all on account of either their absence or their dropping the move	24	46.15
5.	Amendments moved but not discussed as none seconded them.	02	3.85
6.	Miscellaneous	01	1.92
	Total	52	100.00

A glance at the table indicates that 46.15 per cent of the proposed amendments were not looked to with due seriousness. The movers remained either absent at the crucial time or dropped the move.

Only 1.42 per cent amendments incidentally lowest percentage at the table happened to be discussed and rejected in the Consembly. 28.85 per cent amendments were withdrawn by the movers after some discussion took place thereon. It seems that in some cases the reason for the withdrawal was the realisation on the part of the mover that it was necessary in the light of the discussion thereon.

3.85 per cent amendments failed to get even a seconder to second them.

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The most important category of the amendments "the amendments moved, discussed and adopted" formed 17.31 per cent of the total. They may be more or less treated as official amendments as their movers almost invariably were the members of the Government only in one solitary case the amendment was sponsored by a non official member of the Consembly.

The fate of 1.92 per cent of the amendments is unknown.

While the top leadership was keen to project a secular, socialist and democratize perspective in the debates of the Consembly and to hammer into shape a Constitution which could reflect and promote the general interest, some of the members appeared to be dominated by the communal and caste thinking. This was, at that time, a prevailing pattern of approach and mirrored some features of sociological and economic composition of the society in the State. Harijan members strongly sponsored some kind of safeguards for the preservation and promotion of the interests of the scheduled castes. Their proposal included :

(*a*) reservation of seats for the Scheduled Castes in the Legislative Assembly and the Legislative council;

(*b*) inclusion of a Harijan each in the public service commission and the Council of Ministers ;

(*c*) reservation of seats in the civil services ; and

(*d*) the appointment of a special officer as well as commission to report on the socio-economic conditions of the Harijans and make recommendations for their improvement.

This is perfectly clear from the amendments moved by the Harijans members of the Consembly.

The Sikh members, who belonged to a microscopic minority in the State were likewise keen to promote and safeguard what they regarded as the interests of their community. They asked for reservation of some seats for their community in the Legislature.

Some members claiming to represent what they described as backward areas wanted safeguards and reservations for the inhabitants of their areas in civil services. The two members who were 'pronounced leftists' and one who was 'a thorough going nationalist and had socialist leanings' sponsored and supported a secular and economic right, the 'right to work', which they wanted to be guaranteed as a fundamental right.

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Out of the two women members, only one spoke occasionally on the floor of the Consembly and advocated he case of women whom she regarded as far more backward than their menfolk.

All amendments, except one, which were adopted at the end of some discussion thereon had been sponsored and moved by Ministers. Thus they enjoyed the official support of the leadership of the then ruling party in the State.

Very few members happened to be articulate on the floor of the Consembly. An overwhelming majority remained silent but they voted when the occasion so demanded. Thus, only a few members evinced an active interest in the proceedings of the Consembly.

Some of the members did not seem to be serious as they were either absent at the time the amendment sponsored by them was to be taken up for discussion or even though present, they dropped the move.

Most of the amendments, which were moved, were withdrawn after a brief discussion.

In some cases the mover withdrew the amendment without giving any reason thereof.

In one case an amendment was moved but the records do not show whether it was withdrawn or voted down on discussion. The fate of this case, thus remains unknown.

From the records, one finds the words "did not press for his amendment," against the name of its would be mover. It is not clear whether such amendments were taken as withdrawn or ignored and how. Normally, once an amendment is moved and seconded, it can be either withdrawn or discussed, adopted or defeated by the House.

After the completion of the second reading, however, the Drafting Committee, in accordance with the decision taken by the Consembly, revised the Draft Constitution[95]. Then finally, the third stage (reading) of delivering speeches by members highlighting the merits of the Constitution was gone through[96]. Thereafter, the Constitution was approved by the Consembly[97], every member signing it by way of consent[98].

The researcher tried to find out from the respondents the answers to some of the outstanding issues and controversies, the answers to which could not be found out from the records.

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The first of such issues was what role and influence the Government of India had on the framing of the Kashmir constitution. The individual responses varied and as many as seven distinct categories of answers were listed in Table.

Table : 14

The Role and Influence the Government of India had on the Framing of the Kashmir's Constitution

S.No.	Categories of Responses	No. of Persons	Percentage
1.	No influence at all	6	15.00
2.	Influence not before 1953 but thereafter.	2	5.00
3.	Consultations only	8	20.00
4.	Provided expert knowledge only	1	2.50
5.	The final draft was first approved by the Centre	1	2.50
6.	It was centre's creation	3	7.50
7.	Refused to reply	19	47.50
	Total	40	100.00

15.00 per cent of the respondents were of the view that full freedom had been given to the Consembly to frame the Constitution and hence denied any influence exerted by the Government of India. 5.00 per cent of them viewed that there was no such influence before 1953 but thereafter the centre did influence the decisions of the Consembly. 20.00 per cent of them agreed that there were consultations only. Whereas 2.50 per cent of the respondents revealed that the centre simply provided the expert knowledge, the same percentage of them confirmed that the final draft of the Constitution had first been approved by it. 7.50 per cent were of the view that the Constitution was Centre's creation but the majority-47.50 per cent of them however refused to answer this query.

Another issue was whether there was any Indian political party or parties at national or state level which did influence the Constitution making. The individual responses varied and as many as the following six categories of responses were listed in Table.

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Table : 15

Whether there was any Indian Political Party or Parties at National or state Level Which did Influence the Constitution making ?

S.No.	Categories of responses	No. of Persons	Percentage
1.	Communist Party of India	5	12.50
2.	Indian National Congress	2	5.50
3.	National Conference	6	15.00
4.	Indian National Congress and National Conference	2	5.50
5.	No influence at all	9	22.50
6.	Did not reply	16	40.00
	Total	40	100.00

12.50 per cent of the respondents were of the view that Communist Party of India did influence the Constitution making. 5.00 per cent of them outrightly denied the influence of any other political party except the Indian National Congress. 15.00 per cent of them pointed out that if there was any political party which could influence this process, it was National Conference. Whereas 5.00 per cent mentioned the name of Indian National Congress and National Conference together, 22.50 per cent of them denied any influence from any political party. But the majority of the respondents 40.00 per cent refused to respond to this question.

In reply to the query regarding the extent to which these parties could influence the Constitution making, 46.67 per cent of them, who replied in affirmative, mentioned marginal influence only excepting in respect of National Conference, the only party represented in the Consembly, which admittedly had sizeable influence on the shape of the Constitution as it emerged.

Table : 16

Whether the Constitution is a Creation of One Man, a few Men, Outside Influence or the Result of Action and Interaction of Internal and External Influences ?

S.No.	Categories of Responses	No. of Persons	Percentage
1.	One Man	–	–
2.	A few men	6	15.00
3.	Outside influence	4	10.00
4.	Action and interaction of internal and external influences	12	30.00
5.	Replied in negative	1	2.50
6.	Did not reply	17	42.50
	Total	40	100.00

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In response to a query whether the Constitution is a creation of one man, a few men, outside influence or the result of action and interaction of internal and external influences, as many as five different responses were listed in Table.

None of the respondents was of the view that the Constitution was a creation of one man. 15.00 per cent of them viewed that it was a creation of a few men[99]. Whereas 10.00 per cent of them viewed that it was a creation of outside influence, 30.00 per cent of them pointed out that it was a result of the action and interaction of internal and external influences, 2.50 per cent of the respondents replied in negative and the majority of members 42.50 per cent did not reply at all.

Thus, bit by bit, the Constitution of the Jammu and Kashmir state 1957, was forged on the anvil of the Constituent Assembly which represented the then best talents and widest politico-administrative experience. The representatives of all the three regions of the state – Jammu, Kashmir valley and Ladakh – representing a single party's ideology i.e. of the All Jammu and Kashmir national conference – put their heads together and evolved a system of government which with only occasional variations, dictated by circumstances, has been functioning, with a measure of satisfaction for the last more than four and half decades, a period, of course, not too long to evaluate the worth of the Constitution.

Let us now closely examine the fabric of this product in the light of light similar patterns in older democracies that or this state.

REFERENCES

1. C.A.Debate Vol. II No.2 dated 10th October, 1956, p.1.
2. Ibid, p.1.
3. The Draft Constitution Clause 3 p.3.
4. C.A.Debte Vol. VII No.2 dated 10th October, 1956, p.10.
5. Ibid, p.10.
6. Ibid.
7. The Draft Constitution Clause 4 p.3.
8. Ibid, Clause 10, p.5.
9. Ibid,
10. Ibid Clause 6, p.5.
11. Ibid Clauses 11 to 25 pp 5-8.
12. C.A.Debate Vol. XII No.3 dated 22nd October 1956, p,18.
13. The Draft Constitution Clause 27, p.9.
14. Ibid Clause 32 p.10.
15. Ibid Clause 42 p.12.
16. Ibid Clause 46, p.14.

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17. Ibid,
18. Ibid Clause 48 , p.14.
19. Ibid Clause 50 p.5.
20. C.A.Debate Vol. XII No.3 dated 22nd October,1956, p.16.
21. Ibid,
22. Ibid, p.11.
23. The Draft Constitution clause 8 p.30.
24. Ibid Clause 128.
25. Ibid Clause 138(2).
26. Ibid Clause 147 p.53.
27. Ibid Clause 92 p.35.
28. Ibid ch.XII Clauses 148 to 158 pp 54-57.
29. C.A.Debate Vol. XII No.2 dated 10th October 1956, p.9.
30. The Draft Constitution Scheules 1 to VI pp 58-65.
31. C.A.Debates Vol. XII No,3, 1956, p,19.
32. Ibid, pp 2-3.
33. Ibid, p.7.
34. C.A.Debate Vol. XII No. IV date 23rd Octobe, 1956, p.1.
35. Ibid, p.2.
36. C.A.Debate Vol. XII NO.5 dated 24th October, 1956, p.17.
37. C.A.Debate Vol. XII No.4 dated 23rd October 1956, pp 13-14.
38. C.A.Debate Vol. XII No.VI dated 25th October, 1956, pp 1-10.
39. Ibid pp 26-47.
40. Ibid, p.47.
41. Ibid,
42. Ibid.
43. "Any other" category includes the responses of two types :
(*i*) The decision arrived at after free and frank discussion in the committees before 1953 only; and
(*ii*) the decisions arrived at after free and frank discussion in the committees after 1953 only.
44. There were the following seven members of the drafting committee at the following stage :
1. Mr. G.L.Dogra.
2. Mr. Mir Qasim.
3. Mr. D.P.Dhar.
4. Mr. G.R.Ranzu.
5. Mr. Harbans Singh Azad.
6. Mr. Ghulam Nabi Wani Lolabi.
7. Mr. Assadullah Mir.

No. 3 and 7 had died.
Mr. G.R.Ranzu refused to answer even a single question. Out of the remaining four, three members were interviewed.

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45. The first Draft was Nay Kashmir and the second was the Constitution of India.
46. C.A.Debate Vol. XII No.7 dated 29th October, 1956.
47. C.A.Debate Vol. XII No.16 dated 10th November, 1956.
48. Draft Constitution of Jammu and Kashmir, J&KJ Constituent Assembly Srinagar 9th October, 1956, p.6.
49. C.A.Debate Vol. XII No.9 dated 31st October 1956, p. 23.
50. Ibid, p.25.
51. The Constitution of Jammu and Kashmir:Mr. P.L.Gutpa, Secretary, J&K Constituent Assembly, Srinagar, 19th November, 1956 p.7.
52. Draft Constitution of Jammu and Kshmir Op.cit. pp 37-38,40-41.
53. C.A.Debate Vol.XII No.11 dated 3rd November, 1956, p.25. The mover was Pt. S.L.Saraf.
54. Ibid, pp 25-26.
55. Ibid, p.26.
56. Ibid,
57. The Constitution of Jammu and Kashmir, Op.cit. p. 42, 44,47-48.
58. Draft Constitution of Jammu and Kashmir Opcit. p.45.
59. Ibid, p.48.
60. C.A.Debate Vol. XII No.12 dated 5th November, 1956. p.10.
61. Ibid. The mover was Major Piara Singh.
62. Ibid, p.11.
63. The Constitution of Jammu and Kashmir Op.cit. p.58.
64. Draft Constitution of Jammu and Kashmir Op.cit. p.35.
65. C.A.Debate Vol.XII No.14 dated 7th November 1956, p.1. The movers was Mr. G.L.Dogra.
66. Ibid, p.2.
67. The Constitution of Jammu and Kashmir, Op.cit. p.42.
68. Draft Constitution of Jammu and Kashmir Op.cit. p.53.
69. C.A.Debate Vol.XII No.14 dated 7th November, 1956, p.2 The mover was Mr. G.L.Dogra.
70. Ibid, p.3.
71. Ibid,
72. Draft Constitution of Jammu and Kashmir,Op.cit. p.5.
73. C.A.Debate Vol. XII No.15 dated 8th November, 1956 p.1. The mover was Mr. Ra, Piara Saraf.
74. Ibid, ppo 1-2.
75. Ibid, p.2.
76. The Constitution of Jammu and Kashmir Op.cit. pp 64-65.
77. Draft Constitution of Jammu and Kashmir Op.cit. p.62.
78. C.A.Debate Vol. XII No.15 dated 8th November, 1956 p.2. The mover ws Mr. G.L.Dogra.
79. Ibid, pp 2-3.

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80. Ibid,
81. The Constitution of Jammu and Kashmir Op.cit. pp 73-74.
82. C.A.Debate Vol. XII No. 16 dated 10th November 1956, p.1. The mover was Mr. G.L.Dogra.
83. Ibid,
84. IBid p.3.
85. Ibid p.4. The mover was Mr. G.L.Dogra.
86. Ibid, p.4.
87. Ibid p.5.
88. The constitution of Jammu and Kashmir Op.cit. p.2.
89. C.A.,Debate Vol. XII No.10 dated November Ist 1956 p.10. The mover was Mr. Mansukh Rai.
90. Ibid, p.11.
91. Ibid, p.12.
92. C.A.Debate Vol. XII No.9 dated 31t October, 1956 pp 1-2.
93. C.A.Debate Vol. XII No.8 dated 30th October, 1956 p.1.
94. (*i*) C.A.Debate Vol. XII No.9 dated Ist November 1956. The mover was Mr. Abdul Khaliq Butt.
(*ii*) C.A.Debate Vol. XII No. 10 dated Ist November 1956, p.6 The mover was Mr. Mansukh Rai.
95. C.A.Debate Vol. XII No.17 dated 14th November, 1956 p.7.
96. (*i*) C.A.Debate Vol. XII No.18 dated 15th November, 1956 pp 1-8.
(*ii*) C.A.Debate Vol. XII No 19 dated 19th November 1956 pp 1-19.
97. C.A.Debate Vol. XII No.17 dated 17th November, 1956. p.19.
98. C.A.Debate Vol. XII No.20 dated 19th November 1956, p.1.

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THE ENFORCEMENT OF THE JAMMU AND KASHMIR'S CONSTITUTION OF 1957 AND DISSOLUTION OF CONSEMBLY

The Jammu and Kashmir Constitution of 1957 was signed in the Constituent Assembly Hall, Srinagar on November 19,1956 amid joyful references by the state's leaders to the fulfilment of Kashmiri's cherished desire. Four copies of the Constitution were placed on the table of the House. One of these was in Urdu and the other three in English. Out of the three English copies one was to be sent to the National Archives New Delhi[1].

The first to sign the document was Mr. G.M.Sadi, the President of the Constituent Assembly. He affixed his signature on the Constitution amidst prolonged cheers[2]. The name of Sheikh Mohammad Abdullah and eight opposition members were also called out by the President of the Assembly but all of them were declared absent[3].

He then called out one by one the names of the members and each of them affixed his signatures on the constituent[4]. While addressing the House Mr. G.M.Sadiq, the President of the Consembly, made a long speech and said[5]:

"It is a matter of joy to us that we have completed the task with which we were charged in 1951. At that time our country and our people were passing through a critical stage...even our leaders were at a foss to find out a solution of the problem. At that critical time our people had decided to take the fate of the country in their own hand. We had consequently decided to use our right of self determination and to put an end to the uncertain state of affairs. According to this decision this Assembly met on the first of November 1951 and was charged with the duty of presidng over this House. Five years have passed, since the convening of the Assembly and during this period we passed through different difficult stages and it is gratifying that we tided over all these difficulties which came in our way. We have fulfilled the duty which the people had entrusted to us. It has given us a great satisfaction that the House had efficiently and admirably completed its task. It is a fact that we have discharged our duty in a praise worthy manner and have framed the constitution, within the limits which we ourselves had prescribed. We have framed the constitution within the terms of this Agreement (*i.e.* Delhi Agreement 1952) and have safeguarded all those principles, which we were called upon to uphold by our people. This is a thing for which all of you must

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be congratulated. Our this constitution reflects all our desires and aspirations which have, in a systemtic ways been given the shape of law...On the basis of this constitution you have laid the foundation of a true democratic state".

He pointed out that :

"The Constitution which you have framed after give years labour has a history behind it. We have been struggling for it continuously for twenty five years and thousand sons of the soil have sacrified their lives in this struggle to achieve their objective. On this occasion I want to pay my tribute to those martyrs who gave their lives and enabled us to lay the foundation of a democratic state. These martyrs shed their blood in 1931 and there after and thus enabled us to decide our own fate, by framing a Constitution for ourselves. In the present time no better Constitution can be framed, that the one you have given to the people. I, on your as well as on my own behalf, pay tribute to those martyrs and pray that our people will keep up and maintain the spirit and ideals for which these martyrs sacrified their lives."[6]

He reminded the House that :

"During the last five years many events of outstanding nature took place which brought difficulties in our may and it seemed as if the history of our people will be written in a different manner. I am referring to the difficulty which we have to face in the year 1953 when some Hon'ble members of the House were led astray. They did not stand by the principles which were the life blood of our movement. In the year 1951 there were many problems before the House. The basic problems pertained to accession but unfortunately leaders led astray and a dangerous situation was brought about in the State. But you and the people of the country overcame the situation bravely and put the people on the right path which we have chosen previously after due consideration."[7]

He further added that :

"Our neighbouring country Pakistan which had been opposing our freedom movement for the last nine years has recently protested that our Constitution can neither be framed nor enforced. On one hand Pakistan and other countries admit that then people of the State have the sovereign right of self-determination and, on the other, when the people of the State use their right of self-determination, they cry hoarse to protest against its exercise. This is a very amazing attitude. Although it has been accepted by these countries that we have the inherent right to decide our fate, yet whenever we have taken any step to exercise our right of self-determination, these countries tried to place obstacles in our way. Today we are taking final decision with regard to our main problem and in view of this they have begun to make protests. For this it is evident that their slogan for self-determination carries no weight and is a hollow one."[8]

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He stressed that :

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"The Constitution which we have framed is a true reflection of our long cherished aspiration and of our sovereign right in respect of self-determiana. I venture to say without any fear of contradict that we have inherited the spirit and ideals of martyrs and we are determined to maintain this valuable inheritance."[9]

He once again pointed out that :

"It is an occasion for great joy for us that we have fulfilled the duties that were entrusted to us. On this remarkable achievement I heartily congratulate the Hon'ble members of this of House for the continuous work they have done during the five years in this behalf and for the discipline and decorum they have all along maintained in the sessions of the Constituent Assembly. During these five years, some times I had to be bit strict with you, and, I appologize for this as well as thank you all for spirit with which you cooperated with me and thus facilitated my work in the House. I may have expressed myself on some occasions harshly during the deliberations. My objective in doing so was to maintain and uphold the prestige and dignity of the House and to impress upon you the desirability of accomplishing your task in a perfectly thorough manners. In this connection all the Hon'ble members have been good enough to cooperate with me even in their individual capacity. For this I again than the Hon'ble members."[10]

He remained the members that :

"On the first of November 1951 when I was charged with the task I hesitated because never before I had an experience about this work or an occasion to do this job. It was your cooperation and sympathy with which all of us have inherited that encouraged me to enter upon this august office. I am confident that there will not be any misunderstanding about me individually amongst the Hon'ble members even it my opinion different with their views. They accepted it in cooperative spirit and never felt aggrieved."

While congratulating the members once again, for framing a democratic constitution for the state, which was based on secular democracy, Mr. G.M.Sadiq said:

"The Constitution had the backing of the entire people of the state and all freedom loving people of the world".[12]

While congratulating the President of the Consembly as well as the members G.M.Bakshi, the leader of the House, said :

"Today is an epoch making day in the history of our national movement. On this day the House has accomplished a task which will go down in history and will be remembered as an event of great importance for all times to come.

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Every Hon'ble member and particularly you deserve congratulations for the framing of this Constitution. Every Hon'ble member can hold his head high for the unique Constitution, which has been given to the country.

To every citizen whether high or low and to every community, the constitution provide a guarantee and leads the way to rapid progress[13].

I must say that the programme set out by the National Conference in Oct. 1951 embodying desire to set up an Assembly of elected members having full determination to work with sincerity of purpose and maintain the integrity of the country, has been fulfilled. There is no denying the fact that you have accomplished your task with full responsibility. The time and the work done by you has proved that our selection was right one and most suitable. I am of the opinion that the greatest guarantee behind this Constitution is the National Conference and members of this representative organization."[14]

While mentioning about the martyers, who had laid down their lives in the cause of the country's freedom he said :

"I think that the first thing that we must do after the adjournment of their session is to visit the graveyard were they have been buried and pay our heartfelt homage to them. At the same time we should solemnly declare and take a pledge that we shall maintain the independence, prestige, progress and integrity of the country ... and that we shall courageously face and tide over every difficulty that may come in or way."[15]

He then appealed to every political party in the state to study the Constitution carefully and without any prejudice which would reveal to them that it contained all that was essential for general progress which the country needed most.[16]

He further added that :

"This Constitution symbolizes the desires and aspirations of not only a dozen or two dozens individuals but of the entire population of the state and those as well who are not here with us. We have after the full exercise of our right of self-determination, passed the Constitution and consequently the country is now to be put on the path of progress in accordance with the provisions there of."[17]

He further stressed that :

"Our Constitution is based on secularism and affords opportunities to every body and does not provide special concession or privileges for any particular community or class."[18]

He further said :

"Doubtlessly this is a day of joy for us as the duty with which we were charged, has been fulfilled, in the best possible way. For this I repeat

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my congratulation to you and to our colleagues the Hon'ble Members. I, on my own behalf as well as on behalf of this House congratulate you for the patience, for bearance, discipline, broad mindedness and ability with which you havxe guided the deliberations of the House[8]. I ventur to say that you have, during the last five years, not given cause for any complaint to any body. I once again congratulate you on behalf of this House and through you congratulate other colleagues and friends[19].

He assured the people that, "from today onwards their hope and aspirations will be fulfilled. He also congratulated the people for the constitution that House was giving them day and which would meet their very need and fulfil their time-old aspirations. He added that the constitution guaranteed the smooth progress of the State"[20].

He further said :

"No power on earth, how strong and mighty it may be, can change the constitution of Kashmir which has the backing of the people of the state and mighty National Conference"[21].

The Kashmir Constitution day was celebrated to mark the signing of the Constitution. Thousands of the people placed floral wrath on the tombs of the martyrs of the freedom struggle. Addressing a congregation, G.M.Bakshi Said :

"A unique feature of the Constitution is that it has once again declared Kashmir to be an integral part of India. Implementation of the Constitution would usher an era of great progress for the state"[22].

Mr. G.M.Sadiq-the President of the Consembly while congratulating the members on January 25, 1957 at Jammu for the work they had been doing for the last five years and for finally completing the Constitution said :

This is not only matter for me to feel proud of but the people of world have witnessed that we completed our task under conditions of great danger and stress. Therefore, all of us are waiting with abated berath to see the hour when this House stands dissolved formally."

"We saw may ups and down during this period. We put an end to the situation of uncertainty which was created by interested parties. We had chosen to be a part of India as for back as 1947, and on November 17, 1956, we confirmed that decision and gave it a constitutional shape. We are an integral part of India and shall remain so forever. Today we are not alone or unarmed, today we are with India and 360 million Indians"[23]. He further added, "this historic session ends and with this the Constituent Assembly is dissolved in accordance of the resolution passed by Consembly on November 17,1956[14]. When clock struck 12 p.m. on January 25,1957 the Constituent Assembly would be dissolved by the President. He hoped that

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the member would put their full force in the efforts to forward the decision taken by the Consembly and would prove to the world that their decision could not be changed by any person or force"[24].

He further stressed that

"Now the question we have to face in tern is to watch whether the provisions of this Constitution, which we are giving to ourselves, are implemented in the proper spirit or not. Because those aspirations for which the Assembly came into being and did this work can only be fulfilled if this Constitution is implemented in the right spirit"[25].

While reminding the House about difficulties and hurdles which started coming in their way right from the time the people of this state became sovereign, he pointed out :

"On every stage difficulties and hurdles were placed in our way. But with solemn determination we removed one difficulty after another. Every today there are people who do not like to judge the situation on its proper perspective and like to over look the reality. During the last ten years we experienced great many changes and all those changes are obvious. When nation take a decision it is with a firm determination and no power on the earth can effect any change there to"[26].

Bakshi Ghulam Mohd., the leader of the House, while addressing the concluding session of the Consembly on 25th January, 1957 said :

"I felicitate you (Mr. President) and through you to the people of the state today for having completed the work which was entrusted to them in 1951. This was not an easy job rather it was a work entailing a great responsibility. This House had to face thousands of difficulties. Today we are meeting to assess the magnitude of the work completed by us since 1951 to date and to part having accomplished our task. In future to implement and complete the work of this Assembly, the whole nation will be responsible"[27].

While tracing out the brief history he added that :

"In 1951, this Constituent Assembly came into being and in 1952 adopted a few articles of the Constitution which are commonly known as Delhi Agreement. In Feb, 1954 this Assembly adopted the most important part of the Constitution and finally adopted the whole Constitution on 17th November, 1956 which will come into force on 26th, January, 1957. This House has taken very many other decisions beside the question of accession. It decided to abolish the hereditary monarchy and replace it with people's rule. It enacted agrarian and other reforms. All these reforms had only one aim and that was to lead the state on the road to progress. The crowning decision this House took was about accession of the state. Actually the

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decision was already taken in 1947 when our state was subjected to inhuman and barbarous Pakistan's Aggression. For four years from 1947 to 1950 we waited for the decision of the Security Council, where India had gone with a complaint that Pakistan had aggressed her territory. But failing to get any just and reasonable decision, the General Council of All J & K National Conference decided to set up a Constituent Assembly to decided the question of state accession, to defend our freedom with determination, against aggression and to frame our own Constitution. I, therefore, congratulate the people for the Constitution this House giving to them"[28].

He further added that :

"It is a day of mirth and jubilation for the whole nation .. one sees that the people living in cities like Jammu and Kashmir as well in small towns and villages are feeling jubilant over this sub line achievement. Even the people of the Indian Union are jumping with us in marry-making"[29].

Now from 26th January all democratic institutions of the state would function as these functions in other states of India. A democratic Government will be formed under the new Constitution.

Mr. Mir Qasim said that the Consembly framed a Constitution and appointed January 26,1957, as the day of its application to the whole state. The Constitution would come into operation after 12 P.M. that day. As a result every one would have the right to vote, roads would be constructed, canals duged out and there would be an end of poverty and suitable medical arrangements would be made to fight different epidemics. This would bring Naya Kashmir into existence[28]. He further added that :

This Assembly framed a Constitution and appointed 26th January, 1957, as the day of its application to the whole state. The Constitution will come into operation after 12 P.M. today. Now from 26th January all the democratic institutions of the state would function as these function in other states of India. A democratic govt. will be formed under the new constitution".

"We will have an administration based on socialistic pattern. This will drive away poverty, exploitation, and starvation from our state"[30].

Mr. Kushak Bakula while expressing genuine pleasure congratulated the leader of the House and other honourable members on the successful accomplishment of a task of historic importance *i.e.* passing of a secular, democratic constitution for the State, a Constitution which would guarantee to every citizen and every section of the population of the State freedom of thought, speech and association, which would secure equality of rights and opportunities to all the people of the State, irrespective of caste, creed and sex, which in short was the rock foundation on which the magnificent superstructure of a socialistic welfare state could be securely raised to the

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skies, every single feature of the Constitution was a charter for their liberties, their progress and prosperity and was, therefore, worthy of their whole hearted support[30]. While concluding his comments he said :

"Whole Ladakh has gone into a hysterics of joy over the making of the Constitution, for they are confident that it will not only ensure to them the continued enjoyment of rights conceded to them by the present Government but also secure to them the fulfilment of the totality of their aspirations by filling up the few lacunae which a catalogue of their demands reveals[31].

Mr. G.L. Dogra – chairman of the reconstituted Drafting Committee, while addressing the concluding session of the Consembly said :

"Today is really a historic day. The importance of this day is confined to Jammu and Kashmir state alone but it extends to India as well as beyond India. Its importance has affected the people in different ways. The democratic countries are very much pleased on this occasion but the countries not liking democracy have tantalized and want to explain this fact to the world in a distorted manners. We completed the Constitution on 17th Nov. 1956. The part of the Constitution dealing with our state's relationship with India came into force from the date the Constitution was finally adopted and remaining part of the Constitution, which was not put into force immediately, will come into force in a few minutes time"[32].

While moving the resolution regarding dissolution of the Constituent Assembly in the House Mr. Mir Qasim said :

"Where as the Constituent A This assembly came into being for framing the Constituent for the state ; and where as the Constituent Assembly has enacted and adopted the Constitution of the state ; ... This Assembly resolves that it shall stand dissolved on the 26th day of January 1957, which is the date of the commencement of the Constitution"[33].

He further added that :

"This Assembly has done its primary and main function and it is but natural that it should stand dissolved. Legally it could not have been dissolved by any authority because the people elected this Assembly for a special objective. Now the objective has been achieved ; it is reasonable to dissolve it by way of resolution ... This Assembly is not capable of protecting the Constitution. It had only mandate of framing and enacting a Constitution for the state and nothing more"[34].

He further pointed out that :

"The Constitution has set forth the rights of the people. For protection of these rights the judiciary, the Legislature and the executive will function independently and has further defined the limits of their powers. I am confident that the party which led the freedom movement of the people of

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the state in the past will also guide the people in future to look whether or not these three branches of the state authority implement and interpret the Constitution in the right spirit. It is now devolves on the political parties of the state to see whether the people of the state realize and appreciate their Constitutional rights or not ... I hope that the future governments will try their best to implement the provisions of this Constitution to their best of ability and without fear or favour"[35].

Mr. Piyara Singh seconded the motion. The motion was then put to House and Adopted Unanimously.[36]

At the end of the session the Secretary of the House was asked to read over the messages received from various quarters[37]. After this the President of the Consembly, when clock struck 12 p.m., declared "That the historic session end and with that the Constituent Assembly was dissolved according to the resolution passed on November 17, 1956[38]". This occasion had been marked by celebrations. Inspite of heavy snow fall in the evening of January 25,1957[39] fire works functions were held in Srinagar and in all principal towns to mark the conclusion of the ceremonies. All public building and bridges spanning of the Jhelum and a large number of private buildings were illuminated. A special feature of the illumination at the National Conference Headquarter was that the portraits of Mahatama Gandhi, Mr. J.L.Nehru, Dr. Rajinder Parsad, Bakshi G.Mohd and several other leaders were decorated with lights. Several workers of the National Conference and cultural organisations distributed sweets among children[39]. About 1500 Kashmir Muslims in Amritsar celebrated the inauguration of the new constitution day by offering prayer at three Mosques at Amritsar. The Kashmir constitution day celebration was held in New Delhi also[40].

REFERENCES

1. The Hindustan Times, New Delhi November 20,1956.
2. C.A. Debate Vol. XII, No, 20 dated 19th Nov. 1956, p.1.
3. Hindustan Times, New Delhi, dated November 20,1956.
4. C.A.Debate Vol. XII No.20 dated November, 19,1956.
5. Ibid.
6. Ibid.
7. Ibid.
8. Ibid
9. Ibid.
10. Ibid. pp 304
11. Hindustan Times, New Delhi November 20,1956.
12. C.A.Debate Vol. 13 No.1 January 25,1957, p.7.
    Except Sections 1,2,3,4,5,6,7,8 and 158 came into force on November 10,1956 and the remaining provisions of the Constitution came into

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force on the 26th day of January 1957 which referred to in this Constitution as the commencement of this Constitution

13. Ibid.. pp-4-9
14. Ibid.
15. Ibid.
16. Ibid.
17. Ibid.
18. Ibid.
19. Ibid.
20. Ibid.
21. The Hindustan Times, New Delhi, Nov., 20,1956.
22. C.A.Debt. Vol. XIII, No.1 Dated January, 25,1957.p.7.
23. Ibid. pp.1-3.
24. Ibid. p-3.
25. Ibid.
26. Ibid.
27. Ibid.
28. Ibid.
29. Ibid.
30. Ibid.pp4-15
31. Ibid. pp15-16
32. Ibid. pp16-17
33. Ibid. p-17
34. The Hindustan Times, New Delhi, dated January 28,1957.
35. Ibid.
36. Ibid.
37. C.A. Deb. Vol. XII No. 19 dated Nov. 17,1956, pp20-22.
38. Ibid.
39. Ibid.
40. Ibid p-19

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12
EVALUATION OF THE CONSTITUTION AS FRAMED BY THE CONSTITUENT ASSEMBLY

Despite, being one of the twenty eight states of the Sovereign, Socialist, Secular Democratic Republic of India, The Jammu and Kasmir is the only State in the country which has a separate constitution of its own. The State Constitution of 1957 owes its origin to the special circumstances whch existed at the time of partition of British India and creation of two independent dominions-India and Pakistan in general and Pak Invasion of J&K State 1947, and failure of the Security Council to resolve Kashmir dispute amicably in particular. The Constitution of India, however, assured the people of the State to regulate their relations with the Centre as determined by its own Constituent Assembly. The Jammu and Kashmir Consembly was therefore, constituted on the basis of adult franchise for that purpose.

The Constitution of State, howevxer, regulates the relationshiop of the State with the Centre, defines its Cititzenship, ensure Fundamental Rights to its people , mandates Directive Principles for the State, envisages the three pillars of democracy i.e. Executive, Legislature and Judiciary and extentds the jurisdictions of Supreme Court as well as of the Election Commission of India to the State[1].

12.1. Nature of the Constitution

The Constitution of Jammu and Kashmir which comprises 158 sections and six schedules[1a], is a shortest document as compared with the Constitution of India which is the lengthiest written constituent of the world. But 'Short is not used in a pejorative sense. The American Constitution with all its amendments consists of some 7,000 words only. The Constitution of Mongolian People's Republic (1960) contains 94 articles[2], the Constitution of the Democratic People's Republic of Korea (1948), 104 articles, the Constitution of the Republic of Korea (1962), 121 articles[4] and Constitution of India (1950), 395 articles and nine schedules.

The State Constitution is partly rigid and partly flexible. The proviso to section 147 specifies certain features which are unalterable and hence rigid. The said proviso has debarred the Legislature from considering any amendment for altering the "amendment procedure". Moreover a bill or amendment, for seeking to effect -(*a*) the state's accession to India and the extent of the executive and Legislative powers of the State ; or (*b*) the

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provision of the Constitution of India as applicable in relation to the State, shall not be introduced or moved in either House of the Legislature. All other sections of the Constitution are flexible. Thus the Kashmir Constitution is a blend of rigidity and flexibility.

12.2. Preamble

A premable to a Consiution, being a preliminary statement, a preface, prelude and introductory[5], is not a part of it but contains generally, the motive or inducement thereof[6]. Being given it the pride of place by the Constitution makers, it is not only the reflection of the whole constitution as was adopted by the Constituent Assembly but also embodies in a solemn form all ideals and aspirations for which the country had struggled during the (freedom movement as well as an autocratic rule. The preamble of the Constitution is, therefore, the indicator of the aspirations of the people, the objective set forth therein and attainment of the goals specififed in bit. It also refers to the main basic features of the Constitution which cannot be changed even by any legislative measure including the amendment of the Constitution. In other words the preamble to a Constitution generally expresses the political, economic, social, moral and religious values which the Constitution is intended to promote. It shows the general purpose behind the several provisions of the Constitution[7]. It "affords a key to its spirit and its meaning"[8]. It points out the ultimate source of the authority behind the Constitution and states the objectives which the Constitution seeks to implement. Much against expectations and following the Indian example, the preamble which prefaced the Constitution was taken up for discussion in the end when the whole constitution had been adopted.

The Preamble to the Kashmir's Constitution serves three purposes:

(*a*) it indicates the source from which the Constitution springs and from which it claims its sanction ;

(*b*) it indicates the scope of the Constitution ;

(*c*) it states the objects which the Constitution and the Government established by it are to achieve and realize.

While highlighting the salient features of the preamble of Kashmir's Constitution, justice R.P.Sethi pointed out that : "The preamble of the State Constitution besides affirming the preamble of the Federal Constitution, has the following salient features[9]":

1. Refers to the source from which the Constitution derives its authority as is evident from the words"We" the people of the State of J&K, having solemnly resolved do hereby adopt, enact and to give ourselves this constitution.

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2. Afrirms the Accession of the State to Union of India which took place on 26th day of October, 1947 by signing the Instrument of Accession by the then Maharaja of the State.

3. Defines the relationship of the State to the Union of India.

4. Declares the Stsate to be an integral part of the Union of India.

5. Assures justice, liberty, equality and fraternity".

The preamble, however, being the very soul of a law or a Constitution, encompasses the objectives and the ideals of the freedom movement. The National Conference, since its inception, acted on the assumption that 'Sovereignty flows from the people'. The New Kashmir- The Magna Charta- ws also based on this principle.

Constitutions have claimed, in general, their sovereignty from the people in two ways. "Firstly, people themselves are said to have enacted and adopted the Constitution. Secondly people are said to have enacted and adopted the Constitution through their representatives.

Any how in the preamble to the Kashmir constitution, like that of Indian Constitution, the people of Kashmir themselves adopted and enacted the Constitution[10]. The words, "we the people of the State of Jammu and Kashmir..." in the preamble echo the opening words in the preambles of the Constitutions of India, United States and of Eire.

In short the source of the constitution of Kashmir is the will of the people who have achieved the right to frame their own Constitution after great sacrifices.

The scope of the Constitution is reflected in the words "to further define the existing relationship of the State with the Union of India as an integral part thereof....[11]"

This relationship was originally based on the Instrument of Accession which transferred to the Union the subject of Defence, External Affairs and Communications[12]. The residuary sovereignty of the State was fully safeguarded[13] and the state did not commit itself to the acceptance of the future constitution of India[14], nor it "fettered its decision to enter into agreement with the Government of India under any future Constitution"[15]. The special provisions, therefore, were embodied in Article 370 of the Indian Constitution. Only Articles 1 and 370 as provided by the Constitution of India, would thus apply to their own force to the State[16]. The application of the other articles would be determined by the President with the consultation of the State Government[17]. The Legislative authority of parliament over the State, would be confined to those items of the Union and concurrent lists as correspond to matters in the Instrument of Accession. This arrangement was to continue until the Constituent Assembly of the

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State took decisions in this connection. Thus the Constitution (Application to Jammu and Kashmir) order 1950 was issued.This order actually extended certain other provisions of the Indian Constitution to the State with some modifications[18].

The Kashmir Consembly, which met in its first session on October 31, 1951[19] made some important decisions viz. refusal of compensation for the expropriation of the Big Landed Estates, Democratisation of the Political set up, Abolition of the hereditary rulership and adoption of the new state flag. For the implementation of these decisions an agreement- known as Delhi Agreement of 1952[20]- was entered into between the State and Union Governments. The constituent Assembly then ratified the State's accession to the Union in 1954[21]. In order to specify the matters with respect to which the Union Parliament would be competent to make laws for Jammu and Kashmir, the President, in consultation with the State Government, issued the Constitution (Application to Jammu and Kashmir) Order 1954[22]. "The order also extended certain other provisions of the Constitution to the State with modification. It superseded the Constitution (Application to Jammu and Kashmir) Order 1950. The structure of the Constitution of Kashmir, as such has been erected on the foundation provided in the exceptions to and modifications of the Indian Constitution in the Constitution (Application to Jammu and Kashmir) Order, 1954[23].

Section 3 of the Kashmir constitution declares that the State of Jammu and Kashmir is and shall be an integral part of India and section 5 says "The Executive and Legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India[24].

The preamble has declared the resolve of the people of the State to secure to all permanent residents, political, social and economic justice, liberty of thought, expression, belief, faith and worship. It has proclaimed its faith in the doctrine of equality of Status and opportunity to all its citizens and has expressed the hope that a sense of fraternity would prevail by which the dignity of the individual and unity of nation would be guaranteed. The aspirations contained in the preamble have been concretized in chapters dealing with fundamental rights and directive principles.

12.3. Preliminary

Part -1 of the Constitution deals with Preliminary Part *i.e.* short title and commencement of the Constitution and the various definitions. That is the defination of 'Constitution of India ; 'Existing law' ; 'Part'; 'Schedule' and Taxation.[25]This Constitution may be called the Constitution of Jammu and Kashmir. Moreover, sections 2, 3, 4, 5, 6, 7, 8 and 158 shall come into

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force atonce and remaining provisions of this Constitution shall come into force on the 26th day of January, 1957.

Constitution of India means the Federal Constitution as made applicable in relation to the State, in accordance with the provisions incorporated in Art 370 of the federal constitution and section 5 of the State Constitution[26]. 'Existing law' refers to any law, ordinace, order, bye-law, rule, notification or regulation passed or issued before the commencement of the Constitution by the Legislature or other competent authority. In other words all such laws made, ordinances issued, orders, bye-laws, rules, notification or regulation passed under 1934 or 1939 constitution or by the ruler of the State under those constitutions or under his Royal Powers. 'Part' refers to a part of constitution of the State comprising 158 sections, six schedules and divided into XIII parts. 'Schedule' for the purposes of this Constitution means a schedule attached to it. 'Taxation' however, includes the imposition of any tax or import, whether general or local or special. the word 'import' means a tax or a tribute or duty on persons or on goods i.e. a duty on imported good and on mechanaries.

However, any reference in this constitution to Acts or Lawa of the State Legislature shall be construed as including a reference to an ordinance made by Sadar-i-Riyasat[27].

12.4. Relationship with India

Relationship of the State with the Union of India is regulated and governed by the Instrument of Accession, political agreements executed between the State and the Union of India, proclamations issued by the Maharaja, provisions of Article 370 of the Constitution of India, various Constitutional orders passed by the President of India in exercise of his power under Article 370 and the Kashmir's Constitution. However, on the October 26,1947 the Maharaja of Kashmir ultimately signed the instrument of Accession[29] and the State thus acceded to India in the manner prescribed by the Government of India Act 1935[30].The people of the State, in this way, tied their destiny to the people of the rest of India. Though the unity (*i.e.* accession) was final, irrevocable and permanent in law and in fact, yet in keeping with their democratic ideals the Indian leaders had agreed to give the people of Kashmir a chance to reaffirm their future affiliation.

In pursuance of the wishes of the people and in line with the proclamations of March 5,1948[31] as well as April 30, 1951[32], the Kashmir Consembly came into existence in 1951. The formation of the Consembly was not only to set out the constitution for the State but also to set at rest all controversies relating to the accession of the State created as a result of

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reference of the question of tribal invasion and Pakistan's complicity in the invasion, to the United Nations. The United Nations had failed to find out a solution of the Kashmir issue. Thus in order to end the State of uncertainty, wait and see, frustration and agony the Kashmir Consembly ratified the State's accession to India in 1954[33]. Section 3 of the Constitution[34], therefore, runs thus :

"The State of Jammu and Kashmir is and shall be an integral part of the Union of India."

The words "is and shall be" leave no ground for thinking that the people of the State ever had a doubt about their affiliations with India. Evidently the section is part of the fundamental law on which the very structure of the Constitution has been erected and possesses a great Jural significance. Moreover, the preamble to the Constitution also lays down that the Constitution has to "further define the existing relationship of the State with the Union of India as an integral part hereof....[35]" Accordingly, section 5 provides :

"The executive and legislative power of the State extends to all matters except those with respect to which Parliament has power to make laws for the State under the Provisions of the Constitution of India[36]."

This section has also been put beyond the power of the Legislature to amend[37].

The provisions of the Constitution of India, as would be applicable to the State of Jammu and Kashmir, were continued in the Constitution (Application to Jammu and Kashmir) Order, 1954[38]. Except with the agreement of the two Governments, no change can be made in the extent of the executive and legislative power of the Union with regard to the State[39]. Even the concurrent list of the Constitution of India is not applicable to the State[40].Thus section 3 and 5 have the effect of making State's accession to the Union final and irrevocable and no future Legislature can do anything about it.

The virtues of the present Constitutional relations of Kashmir with the Indian Union have been described with varying and exclusive emphasis on its various aspects at various places. Indian people and press, on the whole, have acclaimed it for bringing kashmir closer to India, while the emphasis in Kashmir has been purely on its autonomous aspect.The territory of the State however, covers an area of 2,18,780 sq. miles i.e. comprising of all the territories which on the 15th day of August, 1947 were under the sovereignty or suzeranity of the Ruler of the State. In other words it comprises of the province of Jammu; Kashmir, Ladakh, Gilgit agency and Astore.

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So far as the extent of Executive and Legislative powers of the State is concerned it extends to all matters except those with respect to which Parliament has power to make laws for the state under the provisions of the Constitution of India.

12.5. Permanent Residents of the State

Part-III of the Constitution defines the permanent residents of the State; construction of references to the State Subjects in existing laws; Legislature to define permanent residents ; special provision for bill relating to permanent residents and the rights of the permanent residents of the State. However, the first expression of the popular outburst in Kashmir which had started during the reign of Maharaja Partap Singh, had taken the form of resentment against the outsiders and the slogan had been "Kashmir for the Kashmiris". This had first led to enactment of laws providing preference to 'Mulkis' over the outsiders in the state services, then the adoption of the State Subject definition rules of 1912 and ultimately the State-Subject rules of 1927[41].

Because of its peculiar circumstances the fathers of the Constitution of India enacted special provisions relating of the State of Jammu and Kashmir which implicitly recognised the right of the State to accord this preference to the permanent residents[42]. The citizenship laws of India thus, did not apply to the State.The State-Subject notification 1-L/88 of 1927, was therefore the Law of the Citizenship of the State[43].

The Constitution (Application to Jammu and Kashmir) Order 1950 did not make any change in this respect. Even the entry 17 of the Union List was modified to read only naturalisation and aliens in its application to Jammu and Kashmir[44].

The Delhi Agreement of 1952, however, accepted that "The State Legislature would be given power to define and regulate the rights and privileges of the permanent resident of the State, specially in regard to acquisition of immovable property, appointments to services in the State and like matters[45].

After the ratification of the State's accession with India in 1954[46], negotiations were held between the representatives of the two governments and a compromise was reached[47]. The Government of India, therefore, agreed that the permanent residents of the State could have special rights but they were to have the Common Indian Citizenship and it was further agreed to institute the term 'Permanent Residents' for the term 'State-Subject' as defined in the notification No. 1-L/84 of 1927[48].

Thus by section 2(3) of the Constitution (Application to Jammu and Kashmir) Order 1954, Part-II of the Union Constitution was made applicable

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to the State from the 26th day of January, 1950[49]. Moreover, the State Legislature would have the power to make special provisions, for the permanent residents. So the Legislature in 1954 by inserting section 5A to 5F[50] in the Constitution Act 1939 made provisions in this respect. These regulations remained in existence till the enforcement of the Kashmir Constitution of 1957.

As already mentioned Part III of the Constitution of Jammu and Kashmir deals with the 'permanent' residents[51]. The provisions by and large are the same as of section 5A to 5F of the Constitution Act 1939 and it abolished the laws of separate citizenship[52].

The Constitution left the door open for the subsequent return, and settlement in the State of those of its state-subjects who had migrated after the first day of March, 1947, to the territory subsequently comprising Pakistan. This could be done under a permit for settlement or for permanent return, to be issued by the competent authority under the State Legislation. The Constitution expressly leaves to the Legislature the power to make any law defining the classes of persons who are or shall be 'permanent residents' of the State[53].

12.6. Fundamental Rights of the Permanent Residents of the State

The chapter on Fundamental Rights provides certain rights which are considered a necessary in any human social set up these days. A fundamental right is legally enforceable right of an individual available against the State. It does not mean merely a right of liberty permissible under the law but also right of liberty which enables an individual to develop his personality and his facilities and to live his life in his own interests and in the interests of the community as a whole[54].

The Delhi Agreement of 1952 provided that the fundamental rights, which were contained in the Union Constitution could not be conferred on the residents of the Kashmir State in their entirety[55]. The justification or introducing certain modifications of the fundamental rights as contained in part III of the Indian Constitution, to the Kashmir State was admitted[56] in view of :

(*a*) socio-political-economic nature of the freedom movement as reflected in the New Kashmir ; and

(*b*) the decision of the Kashmir consembly not to award compensation to the expropriated landlords justified on the principle of land to the tillers.

The Constitution (Application to Jammu and Kashmir) Order, 1954, vide Sec. 2(4) made by the President under Article 370, therefore, extended the provisions of Part III of the Indian Constitution to the State with

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modifications[57]. Later on Sec. 10 of the Constitution of Jammu and Kashmir, promulgated on January 26, 1957 stipulated:

The permanent residents of the State shall have all the rights guaranteed to them under the Constitution of India[58].

The Kashmir Constitution thus, apart from the special rights and privileges of the permanent residents of the State, does not contain any bill of fundamental rights. The rights accorded to individual in chapter III of the Indian Constitution are made applicable to the permanent residents of the State but subject to certain important qualifications and modifications[59].

Some of the important modifications of fundamental rights as applicable to the permanent residents of the State are discussed here.

The provisions of the "Right to Equality" shall be applicable to the State with the modification that in clause (4) of article 15, the reference to Scheduled Tribes be omitted and in clause (3) of article 16 the reference to the State shall be construed as not including a reference to the State of Jammu and Kashmir[60]. The application of 'Right of Freedom' to the State is subject to two limitations. Firstly, the rights to freedom of assembly, association, movement, residence and of property (*i.e.* sub clause (*b*) of Article 19(1) are subject to the additional limitation according to which the State Legislature is empowered to impose restrictions on these freedom in the "interest of the security of the State"[61]. The Legislature of the State, is, thus, empowered to determine the circumstances and compulsions which may warrant the imposition of additional restrictions on these freedom. Secondly, "the reasonable restrictions occurring in clauses (2)-(5) shall be construed as meaning" such restrictions as the State Legislature deems reasonable[62]. Briefly, as, extended to the State reasonable restrictions on the right conferred by article 19 means such restrictions as the State Legislature deems reasonable and not the Court as in the rest of the country[63].

The fundamental freedom in the State, therefore, were thus at the mercy of the wishes and whims of the State Legislature as they are not open to judicial review.

The provisions relating to protection in respect of conviction for offences (Article 20) and protection of life and personal liberty (Article 21) shall fully apply to the State[64].

So far as the application of the provision of protection against arrest and detention in certain cases in kashmir is concerned, in clauses (4) and (7) of article 22, for the word 'Parliament' the words 'Legislature of the State' shall be substituted[65].

Thus Article 22 "relating to the preventive detention will apply, except that the power of State Legislature instead of Parliament, and existing law

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of the State with respect to preventive detention shall continue to be in force until repealed or amended by the Legislature, which shall have sole legislative power with respect to preventive detention[66]. It is applied to the State with another restrictive rider by way of a new clause (*c*) to Article 35 which exempts State laws on preventive detention, past or future, from challenge on the ground of violation of Article 22[67]. "The presidential order 1954 was made for a period of five years but it has been extended repeatedly, the last time in 1974 for the ensuing five years[68]".

The provisions relating to right against exploitation and freedom of religion shall fully apply to the State[69].

The provisions of the right of property as envisaged by the constitution of India, are applicable to the State with certain variations and modifications. Firstly, the State Legislature is vested with unrestricted powers to undertake legislation providing for acquisition of property, the mode and manner of the payment of the compensatory amounts, the acquisition of landed estates, extinguishment and modification of interests in corporations and mining and mineral products, without having to reserve such legislation for the assent of the President[70]. The legislature is also vested with a wide authority to undertake legislation to implement the directive principles of the State policy envisage by the Constitution of the State. No such legislation is required to be reserved for the consideration of the President[71]. Secondly, estate, has been redeined in its application to the state, as the land which is occupied or has been let for agricultural purposes or for the purposes subservient to agriculture or for pastures and which include:

(*i*) building sites and other structures on such land ;

(*ii*) trees standing on such land ;

(*iii*) forest land and wooded waste ;

(*iv*) area under fields floating over water ;

(*v*) sites for 'Jandars' and 'gharat' ;

(*vi*) Jagirs, inams, muafis, mukararies and other similar grants, excluding building sites near towns or villages and land reserved for municipalities, notified areas or town planning[72].

So far as the application of the provisions for the "Constitutional remedies" in the State is concerned the Parliament is not vested with the right to empower any other court to exercise jurisdiction in regard to fundamental rights[73]. Instead a special clause is appended to Article 32 of the Indian Constitution and the High Court of the State is vested with powers to exercise jurisdiction for the enforcement of fundamental rights. Moreover, without prejudice to the powers conferred on the Supreme Court, the High Court of the State is empowered to issue orders and writes for the

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enforcement of these rights. The difference is that, whereas the High Courts of other states are vested with the powers to enforce rights under Art.226 of the Indian Constitution[74], the Jammu and Kashmir High Court enjoys the jurisdiction under Article 32 of the Constitution. The reason is technical rather than substantial. The State Government is organised under the Constitution of the State and the High Court of the State is, a part of a separate Constitutional framework.

Thus Supreme Court and the State High Court shall have the power to issue writs or orders for the purpose of the enforcement of fundamental rights[75].

12.7. The Directive Principles of State Policy

Part IV of the Kashmir's Constitution corresponds with the provisions made in the part IV of the Constiution of India comprising of Art 36 to 51. However, besides the fundamental rights guaranteed to the 'permanent residents', the Constitution of Jammu and Kashmir also provides for a set of Directive principles of State Policy in Part IV comprising section 11-25. These Directives, though not enforceable by a Court of Law, are nevertheless declared to be fundamental in the governance of the country[76] and are like affirmative instructions to the Government to do certain things. These are in fact in the nature of the instructions issued not only to the future Legislatures and the executives for their guidance in framing and implementing the law but also to local authorities like panchayats and municipal corporations[77]. These are instruments which give to the Constitution a living spirit.

The Directive Principles of the State policy must be, therefore, regarded as being not the temporary will of majority but as the deliberate wisdom of the nation manifested when setting the paramount and permanent laws of the country[78].

The Directive Principles are, thus, a directive to the State for establishment of a political system, which is intended to be achieved by the Constitution keeping in mind its basic characteristics and features. Though not enforceable in the court of law, yet the state cannot suck from its responsibility to achieve the goals setforth in part IV of the Constitution[79].

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For the establishment of a 'socialistic order' of the society the State is directed to promote the welfare of the masses of the people by establishing and preserving a socialist order of the society wherein all exploitation of man be abolished and justice- social, economic and political shall inform all the institutions of national life[80]. This directive is in complete accordance with the ideals of the freedom movement as well as of the New Kashmir Programme. It is declared to be the concern of the state to develop in a planned manner the productive forces of the State with a view to enrich the material and cultural life of the people. The State, is, therefore, directed to foster and protect the public sector, where the means of production are to be owned by the State, the cooperative sector, where the means of production are cooperatively owned by individual or groups, and the private sector, where the means of production are owned by an individual or a cooperative employing labour[81]. This directive, in a word, envisages not only a readjustment in the economic structure at its very base, but provides for the structural reorganisation and the functional reorientation of the entire economy of the State. It, thus, has a deep and revolutionary import for a rapid economic transformation[82].

As the vast majority of the people live in the countryside, the state is directed to ensure speedy improvement of the standards of living as well as the prosperity of the rural masses. The state is, therefore, directed to organise and develop agriculture and animal husbandry by bringing to the aid of the cultivator the benefits of modern and scientific research and techniques[83]. The organisation of village panchayats endowing them with necessary powers and authority to enable them to function as units of self-government, is also declared to be the responsibility of the state[84].

As Kashmir is very famous for its arts and crafts, the state is directed to take certain steps for promoting her renowned crafts and cottage industries.

It is thus to initiate and execute well considered programme for refining and modernising techniques and modes of production and to provide cheap power[85].

This state is directed to secure, within its economic limits, the now widely accepted right- the right to work-to the permanent residents. It is also provided that the health and strength of the workers be not abused and the permanent residents may not be forced by economic necessity into vocations unsuited to their sex, age or strength, the directives also lay down that all workers should be allowed reasonable, just and human conditions of work with full enjoyment of leisure and social and cultural opportunities; and for permanent residents the assistance and other social securities in old age, sickness, disablement, unemployment and other cases of undeserved want[86].

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It, therefore, provides for the reorientation of the basic concepts of state functions with a fundamental aim to foster a social order which seeks to secure the welfare of the people of state in general[87]. It is also put in the Constitution that the state shall endeavour to provide every permanent resident the right to free education upto the University standard and to provide, within a period of ten years, compulsory education for all children upto 14 years and to ensure to all workers and employees adequate facilities for adult education as well as part time, technical, professional and vocational courses[88]. The Constitution does not ignore the rights of children and women. So far as children are concerned the State is directed to secure them the right to a happy childhood with adequate medical care and attention and equal opportunities in education, employment, protection against exploitation, and against moral or material abandonment[89]. The state, on the other hand is directed to secure to all women the right to equal pay for equal work, maternity benefits and medical care, reasonable maintenance to abandon married women, full equality in all social, educational, political and legal matters; and special protection against discourtesy, defamation, hooliganism and other forms of misconduct[90].

For the socially and educationally backward classes, the state is to promote their educational material and cultural interests and their protection against social injustice[91].

The state is also to make efforts to safeguard and promote the health of the people by advancing public hygiene and prevention of disease through sanitation, pest and vermin control, propaganda and other measures as well as to provide efficient and free medical service[92].

In order to improve the standards of justice, the state is directed to separate the executive from the judiciary in the public services, to secure a judicial system which is humane, cheap, certain, objective and impartial. It shall strive to ensure efficiency, impartiality and incorruptibility of its various organs of justice administration and public utility[93].

Lastly, the state is directed to combat ignorance, superstition, fanaticism, communalism, racialism, cultural backwardness and to foster brotherhood and equality among all communities under the aegis of a secular state[94].

The most characteristic feature of the Constitution is the comprehensive and radically progressive list of the directives which are modelled on some of the basic rights and obligations enumerated in New Kashmir programme as well as part IV of the Indian Constitution. These are projections of the two fundamental basic principles-Liberty and Social Justice-enumerated in the preamble and defined as the ideological objectives of the freedom movement in Kashmir.

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Directive of these types are not the creation of the 20th century, though they abound in the constitutions framed in this age. "They are also found as far back as in the Arthashashtra" and the Magna Carta was in a large measure a declaration of the socio-economic policies of feudal England[95].

Their main role is to supplement the fundamental rights and to give them the much required economic and social content. Their main purpose is to secure and protect a social order in which justice, social, economic and political, shall inform all the institutions of national life[96].

The directives on economic reorganisation are intended to realise an equalitarian society free from class distinctions. The directives on conditions of labourers health and social security measures, are intended for the realisation of a social welfare state. The directives on the rights of children and women are intended to secure equality and justice for these much neglected sections of our society.

Thus the directives are, in fact a programme of action drawn up for active fulfilment. A comprehensive glance at the directive principles of state policy given in the Kashmir Constitution and that of India may help to put the directives in a clear perspective and promote the crystallization of one's understanding thereof, in some depth.

In each case, the directives are based on the preamble of the Constitution and strive to project the purposes of the preamble. And since the essence of the preambles of the two Constitutions is more or less the same, there is a remarkable amount of identity of approach to the definition of the directives in the two Constitutions.

We also come across few differences in case of directives in Kashmir Constitution and those are largely due to the influence of the freedom movement in Jammu and Kashmir and its own cultural and historical ethos.

The directives are dealt with Article 36 to 51 in part IV of the Indian Constitution whereas those given in the Kashmir Constitution occupy section 11 to 25 in part IV thereof.

Section 13 dealing with the establishment of a socialist order for the promotion of welfare of the people considerably remembers the directive of Article 38 of the Indian Constitution.

Section 14 deals, in some detail, with the state economy and commits it to be a planned one ; there is no mention of this in the part IV of the Indian Constitution.

Section 15 pertaining to development of agriculture and animal husbandry has to some extent its counterpart in Article 48 but it goes farther in its accent on rural masses and the desirability in improvement of their standard of living. In either case, the bulk of the population live in the countryside.

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Section 16 on Village Panchayats has its counterpart in Article 40.

While section 17 and Article 43 have a common sector in the subject matter of promotion of cottage industries, the former reflects a particular feature of Kashmir's own cultural heritage. In a considerable detail, it is a directive for the rehabilitation of the world famous crafts of Kashmir, application of modern techniques with a view to their greater sophistication, reduction of human drudgery and the desire to retain the artistic values of the products. The accent in this section is distinctively Kashmiri, which is no natural in the circumstances.

Section 18 on separation of judiciary from executive is paralleled by article 50 on the same subject.

Section 19 pertaining to right of work and public assistance is in some respects as echo of the right contained in the same directives of the Indian Constitution, but in two material respects, it goes farther and is distinctive. In the first instance, in the matter of public assistance and right to work, it confines the right thereof to the permanent residents of the State. Secondly, it speaks of adequate maintenance in old age, medical aid, sanatoria and health resorts at state expense to permanent residents of the State. There is nothing like this in the directives of the Indian Constitution. The reference to sanatoria and health resorts is understandable against the background of the riches of physical nature in Kashmir.

Section 20 like Article 45 envisages free and compulsory education for all children upto the age of 14, but it goes farther in calling upon the state to endeavour to secure to every permanent resident the right of free education upto the University standard. Its stress on adequate facilities for the adult education, part time technical, professional and vocational courses is rather a distinctive feature of the Kashmir directive principles.

Section 21 pertains exclusively to rights of children, whereas children's interests are dealt alongwith those of women and men in a mix in Article 39 of the Indian Constitution. Of course, the two have a basic resemblance.

Section 22 is a fairly comprehensive moral code for the rights of women, whereas similar references to their rights and needs are found haphazardly spread over Articles 39 and 42. Sub-section(*e*) of section 22 is exceptionally timely and relevant in its call to the state to secure women special protection against hooliganism and other forms of misconduct.

Section 23 and Article 46 are largely counterparts of each other. The former refers to promotion of education and other interests of backward classes, whereas the latter includes scheduled castes and scheduled tribes in its amplitude.

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Section 24 of the Kashmir Constitution and Article 47 of that India pertains to public health, but section 24 seems to be much shorter and unlike Article 47 does not specifically deal with the policy on prohibition and narcotic drugs and what is to be done in this connection.

Section 25, the last but not the least of the directives in Kashmir Constitution in calling upon the State to combat ignorance, superstition, fanaticism, communalism, racialism and cultural backwardness has no counterpart as such in the Indian Constitution notwithstanding the commitment to secularism on the part of the two Constitutions.

There is no section in the Kashmir directives which deals with the subject matter of Article 51, the last of the directives in the Indian Constitution, relating to international peace, arbitration and the like. This is quite in tune with the fact that the domain of foreign affairs is beyond the purview of the state jurisdiction.

12.8. The Executive

Part V of the Constitution deals with the Executive power of the State, which vests in the Sadar-i-Riyasat and is exercised by him either directly or through officer's subordinate to him in accordance with the constitution. His office is an elected one. He is made a formal constitutional Head and the executive powers are vested in the ministers and the cabinet. R.P.Sethi rightly points out that 'executive power' is wide enough to cnnote the residue of the governmental function that remains after the legislative and judicial functions are taken away"[97]. However,in almost all Constitutional Acts, promulgated from time to time in 100 years of the reign of Dogra Dynasty in Kashmir, all powers were vested in the Ruler. But in the new Constitution of 1957, these powers have been separated.

The Constitution envisaged a parliamentary government for the State and the executive powers of the State, which extended to all matters not transferred to the union, were vested in the head of the state, called Sadar-i-Riyasat[98]. The New Kashmir on the other hand recognised the ruler of the state as the constitutional head of the state[99]. He was to be indirectly elected through the Legislative Assembly- and ws to be recognised by the President of India as such[100]. His term of office was for five years[101].

The Constitutional position of the Sadar-i-Riyasat is largely the same as that of the President of India except that the President was not described as the head of the State. The framers of the Constitution of Kashmir outlined the position of Sadar-i-Riyasat on the Indian and Irish models viz. that of an elected head of the State, who takes precedence over all other persons in the state and who acts on the advice of his council of ministers[102]. He was

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vested with the powers to grant pardon and to remit, suspend or commute sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the state extended[103]. His powers of appointment includes the appointment of the Prime Minister of the State and on his advice the other members of the Council of Ministers[104] and Dy. Prime Minister[105], the Advocate General[106], district Judges and other than district Judges[107], Chairman and the other members of the Public Service Commission[108], Election Commissioner and Deputy Election Commissioner[109].

He has the power to summon, and prorogue each house of the state legislature and can dissolve the legislative assembly[110], to address either House or both the Houses assembled together[111] and the right to send message to each house[112]. He can nominate two women in the Assembly[113] and six members to the Legislative Council[114].

His assent is essential for every Bill to become a law, and he can return a bill, other than a money bill, suggesting some amendments for reconsideration whereupon the legislature should consider the bill. If, however, the bill is again passed the Sadar-i-Riyasat cannot with-hold his assent thereto[115]. This suspensive veto in the State setting is in itself, a potent factor in interposing a necessary delay in the light of public opinion.

The Sadar-i-Riyasat can also promulgate ordinance which has the force of law, provided he is satisfied (on the advice of the Prime Minister) that circumstances warranted immediate action when both the Houses of the State Legislature are not in session[116]. He may, however, withdraw the ordinance at any time without assigning any reason.[117]

Above all the sadar-i-Riyasat can, with the concurrence of the President of India, issue a proclamation of emergency in case of breakdown of constitutional machinery in the State and can assume the executive and legislative functions of the state[118]. In other States this power is vested, not in the Governor, but in the President of India[119], who no doubt, acts on the advice of his council of Ministers since he is not specifically empowered to discharge any functions by his discretion. He enjoys personal immunity from legal proceedings in respect of acts done or purported to be done in the exercise of his official powers[120]. He is thus a constitutional head of the State and the limitations on his powers put by section 35(2) and 96(*b*) and the comparatively easy method of his removal under section 28 and 32 reduce the possibilities of his becoming a dictator to a minimum.

The Constitutional scheme shows the adoption of Parliamentary form of government as prevalent in Great Britain and Indian Union. Moreover, the provisions made in this paret are analogous to those section 8 and 49(2) of the Govt. of India Act, 1935[121]

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However, the Constitution provided for a Council of Ministers' with the Prime Minister at the head to aid and advise the Sadar-i-Riyasat in the exercise of his functions, except in the appointment of the Prime Minister, Dy. Ministers and other ministers, as well as the emergency powers[122].

The Courts cannot declare an act invalid on the ground that it was not done in conformity with ministerial advice or that it was done by the Sadar-i-Riyasat without seeking the advice of the ministers. But the interference of Legislature cannot be ruled out.

The Prime Minister is to be appointed by the Sadar-i-Riyasat who, on the advice of the former, is to appoint other Ministers and might appoint Dy. Prime Minister. As the Constitution envisages a parliamentary Government for the State, the Sadar-i-Riyasat will be obliged to appoint the leader of the majority party, in the house, as Prime Minister. Moreover, Constitution does not provide how the Prime Minister will choose his colleague. But because of the rule of collective responsibility, the Prime Minister will make his council of Ministers as broadly representative as possible. These Ministers are collectively responsible to the Legislative Assembly. This provision is similar to clause 24 of the New Kashmir. The Prime Minister is requested to communicate all decisions of the Council of Ministers about administration and proposed legislation to the Sadar-i-Riyasat who can also call for any information on these subjects. The sadar-i-Riyasat may cause a matter decided by a minister to be considered by the whole council. This would ensure the collective responsibility and solidarity of the Council of Ministers and provide a safeguard against departmental decisions prejudicial to other departments or general governmental policy. This is also a safeguard against any hasty and arbitrary decision of an individual minister.

The Advocate General

The Constitution also provides for an Advocate General who shsll be appointed by Sadar-i-Riyasat to give advice to the Governor, upon the legal matters and to perform such other duties of legal character, as may be referred or assigned to him by the Government. He is also under an obligation to discharge functions conferred on him by or under the Constitution, code of civil procedure or any other law for the time being enforce. He shall hold office during the pleasure of the Sadar-i-Riyasat.

12.9. Legislature

Part VI of the Constitution deals with the State Legislature, which shall consists of the Sadar-i-Riyasat and the two Houses to be known as the Legislative Assembly and Legislative Council, However, under the present Constitution the State Legislature is the highest law making body with the

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powers to legislate on all matters, except those with respect to which parliament has powers to make laws for the State under the provisions of the Constitution of India[123].

The Legislature is to consist of the Sadar-i-Riyasat and two houses, to be known respectively as the Legislative Assembly and Legislative Council[124].

The Legislative Assembly is to consist of 100 members[125], including twenty five seats which will remain vacant for the representatives of the people living in Pak occupied area of the state[126]. If the Sadar-i-Riyasat is of the opinion that women folk are not adequately represented in the Assembly, he may nominate not more than two women to be the members thereof[127]. So the total strength may reach 102.

There are to be reserved in the Legislative Assembly for the scheduled castes a number of seats which shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled castes bears to the population of the State, for five years[128]. The Assembly is elected on the basis of the adult franchise and for a period of five years[129].

The Legislative Council is to consist of 36, indirectly, elected members, giving representations to functional groups, local bodies and other unorganised social interests. Of these, eleven members are elected by the members of the Legislative Assembly from amongst the residents of the Kashmir province who are not members of the Legislative Assembly and at least one each being elected to represent the districts of Ladakh and Kargil Tehsil[130]. Eleven members are to be elected by Legislative Assembly from amongst the residents of the Jammu province who are not members of the Legislative Assembly, at least one each being elected to represent the districts of Doda and Poonch[131]. One member, each from the two provinces is elected by the electorate constituted of the members of the Municipal Councils, Town Area Committees and notified area committees of each of the two provinces[132]. One member each from he two provinces is elected by the electorate constituted of the members who have been for at least three years, engaged in teaching in educational institutions recognised by the government[133]. Two members by each of the two provinces are to be elected to the Council by the electorates constituted of the members of Panchayats and such other local bodies as the Sadar-i-Riyasat may by order specify[134].

The Sadar-i-Riyasat is empowered to nominate six members, not more than three of whom shall be persons belonging to any of the socially, or economically backward classes in the state, and the others shall be persons having special knowledge or practical experience in respect of matters such

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as literature, science, art, cooperative movement and social service[135]. Both the Houses are to elect their presiding officers known as Speaker and Dy. Speaker[136] and Chairman and Deputy Chairman[137] respectively.

The Council unlike the Assembly is not subject to dissolution but one third of its members retire every two years[138].

As the Constitution embodies a parliamentary system of government, the Legislature exercise control over the political Executive-the Council of Ministers[139].

In matters of Legislation, the respective powers of the two Houses envisaged in the Constitution are also somewhat after the pattern of other parliamentary democracies. The Constitution recognises the pre-eminence of the Legislative Assembly over the Legislative Council. All bills other than the money bills, however, can be introduced in either House of the Legislature[140] and before presentation to the Sadar-i-Riyasat for his assent, are required to be passed by both the Houses[141].

A bill pending in Legislative Assembly does not lapse by reason of the prerogation of the House or the Houses thereof. A bill pending in the Legislative Council, which has not been passed by the Legislative Assembly, does not lapse on the dissolution of the Assembly. But a bill which is pending in the Legislative assembly or which, having been passed by the Legislative Assembly is pending in the Legislative Council lapses on the dissolution of the Assembly.

The framers of the Constitution have so devised the Legislative procedure that the Legislative Council cannot veto bills passed by the Legislative Assembly. It cannot claim equal and coordinate Legislative powers with the Assembly. It can only delay the passage of hasty and ill considered legislation by the Assembly and in certain circumstances invoke the judgement of the electorate. The Council can be a centre of resistance to the abuse of Legislative powers[142].

The Council does not exercise any control over the ministers. But it has a right to keep itself fully informed of the policies and functions of the government.

The Legislature exercises control over the finances of the State[143]. No tax can be levied without the consent of the Legislative Assembly[144].

As far as money bills are concerned the Constitution provides that no money bill can be introduced in the Legislative Council[145]. After the Legislative Assembly has passed such bills they are to be transmitted to the Council for its recommendations to be made within fourteen days of its receipt[146]. The Legislative Assembly is free to accept or reject recommendations[147]. If the bill is not returned within the said period, it will

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be deemed to have been passed by both the Houses in the form in which the Legislative Assembiy has passed it[148].

The Constitution, thus, recognises the pre-eminence of the Legislative Assembly over the Legislative Council.

12.10. The Judiciary

Part VII of the Constitution deals with the judicial system in the State. As in the New Kashmir programme[149], Kashmir's Constitution too provides for a judicial structure with an independent High Court at the apex. It consists of a Chief Justice and two or more other judges[150]. The constitution, thus does not fix any maximum number of the judges, but provides for a minimum number of High Court Judges, excluding the Chief Justice. Unlike "New Kashmir"[151] its judges are to be appointed by the President of India in consultation with the Chief Justice of India, the Chief Justice of Kashmir and Sadar-i-Riyasat[152]. But in case of the appointment of the Chief Justice, the Chief Jutice of India and the Sadar-i-Riyasat are consulted[153]. The procedure for the appointment of the Judges of High Court and Chief Justice of Kashmir is, therefore, mostly similar too that adopted by the Constitution of India in this respect.

Like the Judges of High Courts of the other States of India[154], the Judges of the Kashmir High Court shall hold office until they attain the age of sixty years[155], and neither can they be dismissed by the President[156] nor can their emoluments be varied to their disadvantage during their term of service[157]. A Judge of the High Court can only be removed by the President, if an address is presented to him by each house of the State Legislature, on the ground of proved misbehaviour or incapacity, passed in the same session by a majority of two thirds of the members present and voting[158]. The procedure of removal is, thus, similar to the removal of a judge of Supreme Court of India[159] excepting that for Parliament the words 'State Legislature' have been substituted. The provisions for emoluments correspond to the Article 221 of the Constitution of India.

A detailed classification of the jurisdiction of the State High Court has not been given by the Constitution as there was already in existence a high court with defined powers and jurisdiction. The present Constitution, however, simply framed provisions to preserve its jurisdiction. Thus it enacts that "subject to the provisions of the Constitution of Jammu and Kashmir and to the provisions of any law in force for the time being, laws administered in the High Court shall be the same as immediately before the Commencement of the Constitution[160]. This section corresponds to the Article 225 of the Indian Constitution. This applies to "the statutes, precedents, customs usage

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and personal laws[160]. It also enacts that the high court shall be court of record and shall have all the powers to punish for contempt of itself, or of the courts subordinates to it[162]. Whereas this section corresponds to the Articles 129 and 215[163] of the Constitution of India, the words "a court of record" in this section echo the same words in the section 203 and 220(1) of the Government of India Act 1935[164]. The High Court is also empowered to issue writs or orders in the nature of habeas corpus;mandamus, prohibition, quo-warranto and certiorari, or any of them, for the purposes other than those mentioned in clause (2A) of the Article 32 of the Constitution of India[165]. This section mostly corresponds to Article 226 of the Constitution of India and the jurisdiction of the State High Court, with respect to the enforcement of fundamental rights is concurrent with the jurisdiction, the Supreme Court exercises under the Constitution of India[166].

The High Court has the power of superintendence and control over all courts for the time being subject to its appellate or revisional jurisdiction and all such courts shall be subordinate to the High court[167]. This section corresponds to the article 227 of the Constitution of India[168]. It also vests the court with the power to withdraw cases from the subordinate courts if it is satisfied that the cases involve substantial question of law as to interpretation of the Constitution[169]. This section corresponds to Article 228 of the Constitution of India[170].

The independence of judicial administration has been secured by vesting in the high court, the power of control over district courts and courts subordinate thereto including posting and promotion and grant of leave to persons belonging to the judicial service of state, holding any post inferior to that of the district judge[171]. This section corresponds to the article 235 of the Constitution of India. The power of appointment, promotion and transfer of district judges is vested with the Sadar-i-Riyasat but it is to be exercised in consultation with the High Court. This section too largely corresponds to Article 233(1) of the Indian Constitution. The High Court is primarily a court of appeal from all courts and tribunals within the State. Thus, like the High Court proposed in 'New Kashmir'[172] the high court in the present Constitution is the highest judicial tribunal in the State.

12.11. Finance, Property and Contracts

Part VIII of the Constitution deals with Finace, Property and Contracts. It expressely prohibits the leving or collection of any tax without the authority of law; defines the Consolidated fund and the Public Accounts; Creastion of Contingency Fund; Expenditure defrayable by the State out of its revenue;

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custody of consolidated funds, contigency funds and money credited to the public account; custody of creditor's deposits and other money received by puiblic servants and courts; property accruing by escheat or lapse or as bona-vacantia; powers to carry on trade etc; contracts and suits and proceeding.

In other words, this part of the Constitution highlights that the power to tax is an attribute of sovereignty[173]. All revenues received by the Government; all loans raised by the Government by the issue of treasury bills; loans and advanced and all money received by the Government in repayment of loans shall form the consolidated fund by law made by the Legilslature. It also deals with the custody of suitors, desposits and other money received by public servants and courts. It recognises the general principle that the sovereign takes the property of all persons who die without heirs and intestate by escheat and recognises the executive power of the state to carry on trade or businss and to acquire, hold and dispose of property and to make contracts as wella s that Government may sue or be sued in relation to its affairs and by the name of the state of Jammu and Kashmir.

Thus, so far as the provisions of the State High Court are concerned, the architects of the Kashmir's Constitution have borrowed not only the substance but also the language from the Constitution of India.

SOME OTHER IMPORTANT PROVISIONS OF THE CONSTITUTION

12.12. The Public Services

Part IX of the Constitution deals with the Public Services in the State . In other words the provisions for the statutory regulation of the public services in the State are also included in Kashmir's Constitution[174] the state legislature is empowered to regulate by law, the recruitment of the public servants and to determine conditions of their service.

The Constitution provides for the security of the service personnel by specifying that no person holding a post under the State can be dismissed from service by any authority lower than the appointing one and not without providing him the opportunity of explaining the case and showing cause against the action proposed to be taken against him, except when it is not practicable, in which cases the reasons of dismissal are to be clearly recorded[175].

The Constitution also provides for the State Public Service Commission[176], the Chairman and members of which are appointed by the Sadar-i-Riyasat. They can be removed only by the Sadar-i-Riyasat after an inquiry by the High Court, and their conditions of service cannot be varied to their disadvantage during their term of service[177]. As a safeguards against temptation, it is provided that members of the Public Service Commission

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cannot be eligible for reappointment for more than one term as members[178], though any of them can be appointed as Chairman. The Chairman of the Public Service Commission cannot be appointed to any post under the government after his retirement[179]. In this way ample provisions have been made for the independent functioning of the Commission.

The duties of the Public Service Commission include the holding of examination for selection of candidates for appointment to civil posts, and tendering of advice to the government in the matter of appointment, disciplinary action, and in determining the conditions of service of the civil s ervants[180]. The Public Service Commission is to submit annually a report to the Sadar-i-Riyasat and the report is to be laid with a memorandum of explanation on the table of the legislature[181].

Comparison of the aforesaid provisions with those of the Constitution of India will prove that not only the substance but even the language of the Constitution has been adopted.

12.13. Elections

Part X of the Constitution deals with the Electoral Machinery in the State or to onduct the elections of either house of the State Legislature. That is it provides for the superintendence direction and control of elections; preparation of electoral rolls and eligibility of the persons for inclusion therein; adult suffrage, power to the state legislature to make provision with respect to its elections and baring courts to interfer in the electoral matters. In other words, the adult suffrage[182] is one of the distinctive features of the new Constitution, which provides sufficient safeguards for the condition of free and fair elections. It vests the powers of superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of elections to the state legislature in the Election Commission to be appointed by the Sadar-i-Riyasat[183]. The Sadar-i-Riyasat may, also appoint one or more Dy. Election Commissioners[184] to assist the Election Commissioner for such period as he thinks fit.

The right to vote, however, is limited to permanent residents of the State[185] and no person is ineligible for inclusion on the electoral rolls on the grounds of religion, race, sex, or caste[186]. The Constitution bars the interference by courts in electoral matters[187]. No election to either House of the legislature shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law by the legislature[188].

The State legislature may from time to time by law make provisions with respect to all matters relating to, or in connection with elections to either House of the legislature, including the preparation of electoral rolls,

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the delimitation of constituencies, appointment of election tribunals and all other matters necessary for securing the due constitution of the two Houses[189].

Thus unlike the rest of Indian states[190], the election tribunals in Kashmir are not under the superintendence and control of the State High Court. Any how a writ can be issued by the State High Court against the decision of an election tribunal[191].

12.14. Miscellaneous Provisions

Part XI of the Constitution deals with Miscellaneous provisions such as protection of Sadar-i-Riyasat; Flag of the State; Official language of the State and creation of a Academy for development of Art, Culture and Languages.

So far as protection of Sadar-i-Riyasat is concerned it provides for giving protection and saving from harassment the Head of the State in respect of his official acts which are performed by him on the advice of Council of Ministers. It also gives personal immunity from legal action for his official acts including proceedings for contempt of court. However, at the Delhi Agreement of 1952, a compromise was arrived at between the representatives of Kashmir and India to the effect that the State was allowed to retain its new flag[192]. In the Parliament of India when the question of separate flag for Kashmir, unlike the other states, was discussed, there was a strong opposition[193]. Ultimately the State was allowed to have its new flag, in addition to the Union flag, on sentimental grounds as well as for historical and other reasons connected with freedom struggle in the State[194]. It was no rival to the national flag. The union flag to which the people of the Jammu and Kashmir continue their allegiance as a part of the union will occupy the supreme and distinctive place in the State[195].

The Constitution, provides for a flag for the State[196]. It shall be rectangular in shape and red in colour with three equidistant white vertical strips of equal width next to the staff and a white plough in the middle with its handle facing the stripes[197]. The three stripes represent the three main regions of the state-Jammu, Kashmir and Ladakh.

Thus, like the units of Federal Republic of Germany[198], the States of United States of America[199] and Schotland in Great Britain[200], the Kashmir State too adopted a separate flag as the culminationof the struggle of its people against autocracy as well as to preserve its special characteristic-social and cultural.

However, Urdu is declared by the Constitution to be the official language of the State[201]. But the English Language shall unless the legislature by law otherwise provides, continue to be used for all official purposes of the state for which it was being used immediately before the commencement of this

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Constitution[202]. Recognition is also given to the seven regional languages- Kashmir, Dogri, Balti (Pali), Dardi, Punjabi, Pahri and Ladakhi.[203]

The Sadar-i-Riyasat is vested with the powers to establish an Academy of Arts, Culture and Languages- for the development of Hindi, Urdu and other regional languages of the State[204].

But the Constitution of India has recognised Kashmir only as the regional language of the State[205].

12.15. Amendment of the Constitution

To meet the challenge of changing social and political circumstances, the need may arise from time to time to amend the Constitution. Part XII of the Constitution, therefore, deals with procedure for its amendment . As already pointed out that:

Section 147 of the Constitution specifies that it is partly rigid and partly flexible[206]. The proviso of the said section[207] specifies the features of the Constitution which are unalterable or rigid. The legislature is, therefore, debarred from considering any amendment[208] of the Constitution affecting the:

(*i*) provisions pertaining to the procedure of the amendment of the Constitution;

(*ii*) provisions of Section 3 of the Constitution which stipulate that the State of Jammu and Kashmir and shall be an integral part of the Union of India;

(*iii*) provisions of section 5 of the Constitution which stipulate that the executive and legislative powers of the state extends to all matters except those in respect of which the parliament has power to make laws for the state under the provisions of the Constitution of India; and

(*iv*) provisions of the Constitution of India as applicable to the state.

An amendment to other sections can be initiated by the introduction of a bill in the legislative assembly[209]. To pass through, an amendment bill, except the amendment for the abolition of the Legislative Council, requires the affirmative vote of the two thirds majority of the total membership of both the Houses of the State Legislature[210]. A bill to amend the Constitution seeking the abolition of the Legislative Council is also introduced in the Assembly but requires to be passed by the assembly by a simple majority of the total membership with a two thirds majority of the members present and voting[211].

12.16. Transitional Provisions

Part XIII of the constitution contains provisions pertaining to the transitional period regarding Executive and the Legislature pending the setting up of both Houses of the Legislature under this Constitution.

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The constitution therefore, deals with transitional provisions *i.e.* provisions relating to Sadar-i-Riysat; Council of Ministers of the Sadar-i-Riyasat; for provisional legislature; for pending bills; special provisions for constituting the first legislative assembly; for judges of High Court; Courts, authorities and officers to continue to function subject to the provisions of the Constitution,; for money received or raised or expenditure incurred between the commencement of the constitution and the 31st day of March, 1957. Power of Sadar-i-Riyasat to remove difficulties; repeal and saving of laws and rules and interpretation of the Constitution.

The concluding section of the constitution therefore,, provides that unless the context otherwise requires the general clasuses Article, S. 1977 shall apply for the interpretation of this Constitution as it applies for the inter pretation of an Act of the State legislature.

12.17. SCHEDULES

In addition to 158 sections, the Jammu and Kashmir Constitution of 1957 comprises of six schedules:

12.17.1. First Schedule (See Section 27)

Method of Elections to the Office of Sadar-i-Riyasat.

It deals with the method of election to the office of the Sadar-i-Riyasat. Whenever electionis necessary, the speaker of the Legislative Assembly shall fix time and date for holding election. At any time before moon on the date preceeding the date so fixed any member of the Assemy may nominate another person for election. Any person who has been so nominated may withdraw his condidature. Where there are two candidates, the candidate who obtains the largest mumber of votes shall be declared elected . In case of the tie, the speaker in his absence the person the presiding, shall exercise his casting vote.

Where more than two candidates in the fray and at the first ballot no candidate obtains more votes than aggregate votes obtained by the other candidates the candidstes who obtained smallest number of votes shall be droped and balloting shall proceed. The candidate obtaining the smallest number of votes at each ballot excluded from the election, untill one candidate obtains more votes than the remaining candidates.

Howeve, the Prime Minister of the State shall communicate the name of the person duly elected by the Assembly as the Sadar-i-Riyasat to the President of India for being recognised as the Sadar-i-Riyasat of the State.

12.17.2. Second Schedule (See Section 30)

Emoluments, Allowances and Previleges of the Sadar-i-Riyasat.

It deals with emoluments, allowances and previleges of the Sadar-i-Riyasat. he will emoluments of Rs. 5,500 per mensem. In order to discharge

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his duties of the office conveniently and dignity he shall be paid Rs. 1,09,000 per annum. He shall also be entitled of free, furnished official residence along with two cars, one jeep, one station wagon and one Motor cycle.

12.17.3. Third Schedul (See Section 62)

Salaries and allowances of the Speaker and Deputy Speaker of the Legislative Assembly and Chairman and Deputy Chairman of the Legislative Council.

The salaries and allowances of the Speaker of the Legislative Assembly and the Chairman of the Legislative Council shall be equal to that of Ministeres of the State. Whereas, Deputy Speaker of the Legislative Assembly shall be paid such salary and allowances as were payable to him immediately before the commencement of this constitution. But the Deputy Chairman of Legislative Council shall be paid such salary and allowances as the Sadar-i-Riyasat may determine.

12.17.4. Fourth Schedule (See Section 98)

Salaries and Allowances of the Judges of High Court.

The Chief Justice and Judges of the High Court shall be paid Rs. 2500 and Rs. 2000 per mensum respectively. But if a judge of High Court is in receipt of a pension in respect of any provious service rendered before his appointment, his salary shall be reduced by the amount of that pension. HJowever, every judge of the High Court shall receive such reasonable allowances to reimburse him for expenses incurred in travelling on duty within the territory of the State along with such reasonable facilities in travelling as the Sadar-i-Riyasat may from time to time prescribe. The rights in respect of their leave of absence, including leave allowances and pensions shall be governed by the provisions, which immediately before the commencement of this consitution were applicable to the judges of the State High Court. Here Chief Justice includes an acting Chief Justice and a Judge includes an acting Judge also. Their actual service includes time spent by a judge on duty as a judge or in the performance of such other functions as he may at the request of Sadar-i-Riyasat undertake to discharge and vacations, excluding any time during whih the judge is absent on leave.

12.17.5. Fifth Schedule (See Section 40,64 and 97)

Forms of Oaths or Affirmation

It prescribes forms A,B and C and D i.e. the Oath for a Minister, a Deputy Minister Oath or Affirmation to be made by a member of the Legislature and oath or Affirmation to be made by the Judges of the State High Court.

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12.17.6. Sixth Schedule (See Section 146)

Regional Languages

It prescribes the regional languages of the stdate. There are :

1. Kashmiri ;
2. Dogri ;
3. Balti (Pali) ;
4. Dardi ;
5. Punjabi ;
6. Pahari and
7. Ladakhi

The facts analysed leads us to certain conclusions. It is perfectly clear that the first phase of the Constitution making in Jammu and Kashmir state, which commenced on the state's accession to India in October 1947, terminated with the constitutional crisis of August 1953. The period was marked by the hightide for the efforts to secure the maximum autonomy for the State as a Constituent unit of the Indian Union.

In short the first phase of building a Constitutional structure on the pillars of maximum autonomy failed to come off because of constitutional crisis of 1953 which was caused by the motivational variations arising from the political considerations and the failure of the leadership at various levels to reconcile the various claims and aspirations.

The second phase of the Constitution making, which commenced with the dismissal and arrest of Sheikh Mohd. Abdullah in August 1953, continued upto the January 1957 . Though the basic foundations on which the new constitution would be based- secularism, democracy, equality and social and economic justice-remained the same, yet a shift in the policy from 'larger autonomy' towards limited autonomy took place. The then Kashmiri leadership in power followed a course of partial and cautious integration of the state with the Indian Union. Consequently, the present Constitution of the state contains provisions to give effect to their policy formulations of the leadership in power during this period.

It may now be useful to broadly analyse the provisions of the Constitution dealing with these matters. No action can be taken by the Union Parliament for increasing or diminishing the area of the state or altering its name without the consent of the state legislature. Regarding the Sadar-i-Riyasat as the head of the state the Constitution provides for his election by the State Legislative Assembly as well as his recognition by the President of India. It is further provided that the Sadar-i-Riyasat can be dismissed by the President on presentation of an address by the State Legislative Assembly

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passed by a prescribed majority and that he shall hold office during the pleasure of the President.

In the matter of dual citizenship, the state legislature is empowered to define the classes of persons who are or shall be permanent residents of the state without any intelligence on the part of the Union Parliament. Such permanent residents enjoy certain privileges which are not available to Indian citizens who are not permanent resident of the State.

In regard to fundamental rights of the Indian Constitution, they are made applicable to the inhabitants, who are state-subjects, with certain modification by the state legislature. The determination of reasonableness of the restrictions which may be imposed on the rights, has been placed beyond the purview of the judiciary and vested in the state legislature itself. The state legislature's word is final. Moreover no existing law in force in the state and no law enacted by the state legislature in future defining the classes of persons who are permanent residents of the state or conferring the special rights and privileges in respect of employment under the state government acquisition of immovable property in the state, settlement in the state, or right of scholarship etc. shall be invalid on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of Part III of Indian Constitution.

As to proclamation of emergency on ground of internal disturbances of imminent danger thereof as envisaged in Article 352 of the Constitution of India, it has been provided that the President can make such a proclamation applicable to the state only at the request or with the concurrence of the government of the state. So far as emergency pertaining to the breakdown of Constitutional machinery in the State, is concerned, the Sadar-i-Riyasat can make proclamation with the concurrence of the President of India. The state has been allotted 4 seats in the Council of States and 6 in the House of the People . But the representatives of the state in the House of the People shall be appointed by the President on the recommendation of the Legislature of the State.

Unlike the other constituent states of the Indian Union, the jurisdiction of Supreme Court is not to apply in its entirety to the Jammu and Kashmir State.

In regard to flag controversy, it is finally incorporated in the state constitution that the state shall have its own flag.

Regarding the right to vote for the election to the legislative assembly, it is provided that this right shall be confined to the permanent residents of the state.

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For the preparation of electoral rolls and the conduct of elections, the state constitution provides for a separate Election Commission.

Reflective of this policy during the said period are also the ratification of the state's accession to India by the Kashmir Consembly, full implementation of Indo-Kashmir Agreement of 1952, financial integration, abolition of the permit system and subsequent extension of the jurisdiction of the Indian Election Commission and Supreme Court of India in 1960.

REFERENCES

1. Sethi, R.P: Commentry on the Constitution of Jammu and Kashmir, Ashoka Law House, New Delhi,2005.

1(*a*). The Constitution of Jammu and Kashmir State, 1957.

2. Constitution of Asian Countries prepared by the Asian-African Legal Consultative Committee. N.M.Tripathi Private Ltd. Bombay, 1968 p.833.
3. Ibid, p.531.
4. Ibid, p.555.
5. Sethi, Justice R.P: Commentary of the Constitution of Jammu and Kashmir, Ashoka Law House New Delhi, 2005, p.126

6 Ibid, p.125.

7. Ibid, p.128.
8. Basu, D.D: Shorter Constitution of India, S.C.Sarkar and Sons Pvt. Ltd I-1, College Square Calcutta 12,1967, p.1.
9. Gajendargadkar, P.B: The Constitution of India, Oxford University Press London 1969 p.12.
10. The constitution of Jammu and Kashmir Op.cit p.1.
11. Ibid.
12. India and Kashmir-Constitutional Aspect. Op.cit. Appendix I, pp 11-12.
13. The Instrument of Acession Clause 8.
14. Ibid, Clause 7.
15. India and Kashmir-Constitutional Aspect Op.cit. p.3.
16. Basu, D.D: Union Jurisdiction Over Jammu and Kashmir, S.C.Sarkar and Sons Ltd 1-C, College Square Calcutta 12, p.1.
17. Ibid,
18. Ibid, p.2.
19. C. A. Debate. Vol.1 No.1 of 31st Oct. 1951 p.1.
20. Delhi Agreement of 1952.
21. C.A.Debate Vol. III No.IV, dated 6th feb, 1954.
22. The Constitution (Application of Jammu and Kashmir) Order 1954.
23. Anand, Adarsh Sein:The Development o the Constitution of Jammu and Kashmir Op.cit. p.248.

25. The Constitution of Jammu and Kashmir pp 2-3.

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26. Sethi, K.P. Commentary on the Constitution of Jammu and Kashmir Op.cit. 141.
27. Ibid,
28. Ibid, p.155
29. India and Kashmir-Constitutional Aspects Op.cit. p.3.
30. Govt of India Act of 1935 Section 6.
31. Proclamation of Shree Inder Mohinder Raj Rajeshwar Maharaja-Adhiraj Shri Hari Singh ruler of Jammu and Kashmir and endencies, Jammu March, 1948.
32. Proclamation of Yuvraj Karan Singh, the Regent of Jammu and Kashmir. J&K Gazette Extraordinary Ist May, 1957.
33. C.A.Debate Vol. VIII No.IV dated 6th Feb,. 1954, p.48.
34. The Jammu and Kashmir Constitution Op.cit. p.3
35. Ibid, p.1.
36. Ibid, p.3.
37. Ibid, Sec. 147, pp 62-63.
38. Basu, D.D: Union Jurisdiction Over Jammu and Kashmir, Op.cit. p.3.
39. annand, Adarsh Sein:The Development of the Constitution of Jammu and Kashmir Op.cit. p.252.
40. Ibid.
42. Bhushan, Vidya: State Politics A Govt. Jammu and Kashmir, Jay Kay Book House, Residency Road, Jammu, 1989 p.302.
43. Anand, Adarsh Sein:The Development of the Constitution of Jammu and Kashmir Op.cit., p.260.
44. Constitution of India, List I-Union List-Seven Schedule.
45. Ibid Appendex II(Delhi Agreement)
46. C.A.Debate Vol. III No.IV dated 6th Feb. 1954.
47. Anand, Adarsh Sein:The Developmen of Constitution of Jammu and Kashmir Op.cit. p.261.
48. Ibid, p.262.
49. The Constitution (Application to Jammu and Kashmir) order 1954, J&K Govt. Law Dept. Srinagar, 1954 p.11.
50. The Jammu and Kashmir Constitution Act. No. XIV of 1996 1939) J&K Government.
51. The Constitution of Jammu and Kashmir Op.cit. pp 3-4.
52. The Jammu and Kashmir Constitution Act No. XIV of 1996 Op.cit.
53. The Constitution (Application to Jammu and Kashmir)Order 1954 Op,cit. Sec 2(3)(b) Proviso p.2.
54. Gajendragadkar, P.B: The Constitution of India, Oxford University Press London 1969 p.24.
55. India and Kashmir-Constitutional Aspects Op.cit. p.20.
56. Ibid, p.25.
57. A.G.Noorani: Kashir's Constitutional Problem the Indian Express, Delhi: 22nd July, 1977 p.4.

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58. The Constitution of Jammu and Kashmir Op.cit. p.4.
59. The constitution(Application to Jammu and Kashmir) Order 1954 Op.cit. p.2.
60. Ibid, p.2.
61. IBid,
62. Ibid,
63. A.G.Noorani Art. Kashmir's Constitutional Problems Op.cit. p.4.
64. A.G.Noorani Art. Preventive Detention Revived.
65. The Constitution (Application Jammu and Kashmir) order 1954 Op.cit. p.6.
66. Basu, D.D: Commentary on the constitution of India Vol. V Op.cit. p.247.
67. A.G.Noorani Art "Preventive Detention Revived" Op.cit. p.6.
68. Ibid, Op.cit. p.6
69. The Constitution of India:Eastern Book Company 34-Lal Bagh Lucknow 1975, pp 10-11.
70. Basu, D.D: Commentary on the Constitution of India, O.P.Vol. V p.247.
71. IBid,
72. Ibid, p.247.
73. Ibid, p.248.
74. Ibid,
75. Basu, D.D: Commentary on the Constitutionof India, Vol.V Op.cit. p.248.
76. The Constitution of Jammu and Kashmir Op.cit. Sec. 12 p.5.
77. Ibid, sec.11.
78. Sethi, R.P: Commentary on the Constitution of Jammu and Kashmir Op.cit. p.211.
79. Ibid, p.212.
80. The Constitution of Jammu and Kashmir Op.cit. Sect. 13.
81. Ibid, Sec. 14.
82. Teng and Kaul, Kashmir Special Status, Oriental Publishers and Distributors Delhi 1975, p.137.
83. The Constitution of Jammu and Kahmir Op.cit. sec.15.
84. Ibid, sec. 16
85. Ibid sec.17
86. IBid sec.19.
87. Teng and Koul:Kashmir Special Status Op.cit. p.139.
88. The Constitution of Jammu and Kashmir Op.cit sec.20.
89. Ibid, sec.21.
90. Ibid sec.22.
91. IBid sec.23.
92. Ibid sec.24.
93. Ibid, sec.18

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94. Ibid, sec.25.
95. Prasad, Ramesh:The Constituent Assembly of India Thesis submitted for Ph.D. University of Agra 1960 p.294.
96. The Jammu and Kashmir constitution Op.cit. sec. 13 p.5.
97. Sethi, R.P: Commentary on the Constitutionof Jammu and Kashmir Op.cit. p.265.
98. The Constitution of Jammu and Kashmir Op.cit. Sec. 26 p.9.
99. Ibid, clause 27 p.18.
100. Ibid,
101. Ibid, sec.28.
102. Anand, Adarsh Sein:The Development of the Constitution of Jammu and Kashmir Op.cit. p.288.
103. The constitution of Jammu and Kashmir Op.cit. sec 34 p.12.
104. Ibid sec 36 p.12.
105. Ibd sec 36 p.13.
106. Ibid sec. 109 p.13.
107. Ibid sec 109 p.48
108. Ibid sec 1239 p.54.
109. Ibid sec 138(1)(2) p.59.
110. Ibnid, sec 53 p.20.
111. Ibid sec 54(1)
112. Ibid sec 54(2)
113. Ibid sec. 47(Proviso)
114. Ibid sec 50(6)
115. Ibid sec 78 pp 32-33.
116. Ibid sec 91 p 40.
117. Ibid sec 91(2)(b)
118. Ibid sec 92, pp 41-42.
119. Constitution of India Art 356.
120. The Constiution of Jammu and Kashmir sec. 143.
121. Sethi, R.P: Commentary on the Constitution of Jammu and Kashmir Op.cit. p.277.
122. Ibid sec. 35 p.12.
123. The Constitution of Jammu and Kashmir Op.cit. sec. 5.
124. Ibid sec. 46.
125. Ibid sec. 47.
126. Ibid sec 48(b)
127. Ibid sec. 47(proviso)
128. Ibid sec. 49(1)
129. Ibid sec. 52.
130. Ibid sec 50(2)
131. Ibid sec 50(3)
132. Ibid sec 50(4)
133. Ibid,.

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134. Ibid sec 50(5)
135. Ibd sec 50(6)
136. Ibd sec. 57.
137. Ibid sec 61(1)
138. Ibid sec 52(2)
139. Ibid sec. 37.
140. Ibid sec 74(1)
141. Ibid sec. 78.
142. Anand, Adarsh Sein:The Development of the Constitution of Jammu and Kashmir Op.cit. p.312.
143. The Jammu and Kashmir Constitution sec. 79.
144. Ibid sec. 80.
145. Ibid sec 76(1)
146. Ibid sec 76(2)
147. Ibid sec 76(5)
148. Ibid,
149. New Kashmir Op.cit. p.19.
150. The Jammu and Kashmir Constitution Op.cit. sec. 93(1).
151. "New Kashmir" Op.cit. Clause 36 p.19.
152. The Jammu and Kashmir Constitution Op.cit. sec. 95.
153. Ibid sec. 95
154. The Constitution of India Art. 217.
155. The Constitution of Jammu and Kashmir Stte Op.cit sec. 95.
156. Ibid sec 99(2).
157. Ibid sec. 98(Proviso)
158. Ibid sec 99(2)
159. The Constitution of India , Art. 124(4)
160. The constitution of Jammu and Kashmir Op.cit. sec. 102.
161. Anand, Adarsh Sein:The Development of the Constitution of Jammu and Kashmir, p.327.
162. The constiution of Jammu and Kashmir Op.cit. sec. 94.
163. The Constitution of India.
164. Basu, D/D:Commentary on the Constitution of India Op.cit. ol.VI pp 193 and 198.
165. The Constitution of Jammu and Kashmir Op.cit. sec. 103.
166. The Constitution of India.
167. The Constitution of Jammu and Kashmir Op.cit. sec. 104.
168. The Constitution of India.
169. The constitution of Jammu and Kashmir Op.cit. sec. 104.
170. The Constitution of India.
171. The Constitutionof Jammu and Kashmir Op.cit. sec. 111.
172. 'New Kashmir" Op.cit. clause 35.
173. Sethi,R.P: The Commentary on the Constitution of Jammu and Kashmir Op.cit. p.504.

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174. The Jammu and Kashmir constitution Op.cit. part IX.
175. Ibid sec. 126.
176. Ibid sec. 128.
177. Ibid sec. 130.
178. Ibid sec. 129(3).
179. Ibid sec. 131(Proviso)
180. Ibid sec. 133.
181. IBid sec. 137.
182. Ibid sec. 140.
183. Ibid sec. 133*1)
184. Ibid sec 138(2)
185. Ibid sec. 140.
186. Ibid sec. 139.
187. Ibid sec. 142.
188. Ibid sec. 142(b)
189. Ibid sec. 141.
190. The Constitution of India Art. 227.
191. The Jammu and Kashmir Constitution Op.cit. sec. 103.
192. C.A.Debate Vol. III No.1 dt 7th June, 1952.
193. Parliamentary Debte (House of People) 1952 1952 part II Vol. V No. 8 Col. 5775-2922.
194. Ibid.
195. The Flag Issue-The Kashmir Bureau of Information, New delhi, year not known p.1.
196. The Jammu and Kashmir Constitution Op.cit. sec. 144
197. Ibid.,
198. The Flag issue Op.cit. p.X
199. IBid,
200. iBid.
201. The Jammu and Kashmir Constitution Op.cit. sec. 145.
202. Ibid.
203. The Jammu and Kashmir constitution Op.cit. sec. 145.
204. Ibid sec. 146.
205. Constitution of India, Eighth Schedule.
206. The Jammu and Kashmir constitution sec. 147.
208. Ibid,
209. Ibid
210. Ibid
211. Ibid.

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13

EPILAGUE

Under the British regime, Jammu and Kashmir was an Indian state ruled by a hereditary Maharaja. On the 26th of October 1947, when the state was attacked by tribals and so-called Azad Kashmir forces with the support of Pak forces, the Maharaja was obliged to seek the help of India, after executing an Instrument of Accession. The Union of India, thus, acquired jurisdiction over the state with respect to subjects of Defence, External Affairs and Communications. The Constitution of India, therefore, provided that only Art 1 an Art. d 370 would apply of their own force to J&K. The applications of the other Articles would be determined by the President in consultation with the Government of the State. The above interim arrangement would continue untill the Constituent Assembly for Jammu and Kashmir makes its own Constitution.

The position of the Jammu and Kashmir state within the frame work of the Constitution of India was, thus, peculiar. Recognising the peculiar position and the circumstances in which the State acceded to India, the Constitution of India granted special status to the State and declared that' it was the people of the State, acting through their Constituent Assembly were finally determine the Constitution of the State and its relation with Indian Union'.

Being, a Constituent state of the Indian Republic, the Jammu and Kashmir has, therefore, held a unique distinction of having its own constitution drawn by its own Consembly. Based on the Instrument of Accession its special status has since been crystallized in Article 370 of the Constitution of India.

As already pointed out that the idea of having a Constituent Assembly to draft a Constitution for the State was first conceived by some of the leading members of Muslim Community of Kashmir as back as in October, 1924. This idea was once again mooted by the All J&K National Conference at its historic Sopure Session of 1944 and a model Constitution had been laid down in its Naya Kashmir programme. The need of convening the Constituent Assembly to draft a separate Constitution for the people of Jammu and Kashmir State had also been the settled policy of the Government of India and the same stand was stressed by Pt. Nehru in his letter of May 18, 1949 addressed to Sheikh Mohd Abdullah- the then Prime Minister of Jammu and Kashmir State. The right to Kashmir state to convene its own Consembly and draft its own constitution was also endorsed by Sardar Patel and Sh. N.Gopala Swami Ayyanger.

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The subsequent political events and circumstances such as inhuman and barbarous Pak aggression; four years wait for the just and reasonable decision of the security council where India had gone with the complaint that Pak had agressed its territory; to end the state of uncertainty, wait and see, frustration and fully recognising the right of the people of the State for self- determination led the General Council of the All J&K National Conference to issue a mandate to its Supreme National Executive in 1950 to Constitute Constituent Assembly to draft the constitution of the State. As a result Yuraj Karan Singh- the Regent of the State-issued a proclamation for Constituting the Constituent Assembly for the State on April 30, 1951.

These circumstances, have thus, offered an opportunity for the study of the Constituent Assembly and Constitution making in the Jammu and Kashmir State, which is a sub-system of Indian political System as it developed since the dawn of its emancipation from the Dogra autorcratic rule.

A perusal of the pages may be sufficient to state that what has been studied is not merely the Constituting the Constituent Assembly of the State and the formation and features of bare Constitutional frame work, but also the politico-socio-economic forces which powerfully influenced the convening of Consembly as well as making final shape of the Kashmir polity. An effort has, thus, been made to perceive the entire scenario of the convening of the Consembly and Constitution making process in J&K as a part of the wider and more fundamental and pervasive nation building and the political development in which it has evidently and perhaps necessarily involved. As the Kashmir state is the only state in Indian Republic which got the right to convene its constituent Assembly and frame its own constitution, the significance and relevance of the present study is obvious.

The Constituent Assembly of the Jammu and Kashmir State launched on the high adventure of giving shape, in words, to the dreams and aspiration's of its people on the morning of October 31,1951 and ceremoniously completed its task on November 17,1956. During this period it held thirteen sessions and the total working days number fifty nine. The time taken by Constituent Assembly was on the whole not too long as compared with the time taken by the other constitutional conventions.

For instance, the American Convention met on May 25, 1787 and completed its task on September 17,1987. Thus taking almost five months. The South African Convention took one year to complete its task. The Canadian Constitutional Convention took more than two and a half year. The Indian Consembly launched its task on December 9,1946 and completed its task on November 26,1949. Thus taking almost three years. The Australian Constitution was adopted after nine years *i.e.* on the July 9,1900. It, therefore,

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becomes clear that five years time taken by the Constituent Assembly of Jammu and Kashmir was not abnormally too long. Added to this, was the noval technique adopted by Kashmir's Consembly for framing its Constitution. Like that of Indian Consembly, it too first discussed the reports of Committees and the Basic Principles of the Consitution were laid down thereafter. Then the Draft Constitution was prepared. But this was not all, for as many as fifty two amendments were moved. Out of which nine amendments were moved, discussed and adopted; one was discussed and rejected; fifteen were moved but withdrawn by the mover after discussion; twenty four amendments stood against the name of the movers but not moved at all on account of either absence of the members or their dropping the move, two amendments moved but not discussed as none seconded them and the fate of one amendment was unknown.

13.1. Problems Faced by Constituent Assembly

As already pointed out in earlier chapters that there were certain reasons for the long time taken by kashmir's Consembly. Firstly, the strong opposition of the All Jammu and Kashmir Praja Parishad-the then only effective oppositions party of Jammu- against convening of a separate Constituent Assembly of Kashmir and framing a separate Constitution for the State; boycotting Consembly elections; its condemnation of certain provocative decisions of the Consembly which cause the deep resentment throughout Jammu province; its cry for the right of self- determination for Jammu and launching of its agitation in mid of 1952. Secondly, the demand of the people of Ladakh, through their single member in Constituent Assembly for a statutory provision in the future constitution of the state under which state's North-Eastern Frontier province of Ladakh, covering Sinkiang and Western Tibet, would become a federating unit of Kashmir as long as the accession of the State to Indian endured. Simultaneously the inhabitants of Doda district along with its member in Kashmir Consembly being much agitated and demanded to give it the status of a separate cultural unit like that of Jammu and Ladakh in the future constitution. Thirdly, the emergence of certain irritations and tensions in Indo-Kashmir relations during 1952 and the provocative speeches made by Shekh Mohammad Abdu!lah. Fourthly, the sudden death of Dr. S.P.Mookerji-the President of the Akhil Bharatiya Jana Sangh and the leader of opposition in Parliament- on June 23,1953 in detention at Srinagar which led the emergence of anti-Nehru and anti-Abdullah wave in whole of North-India. Fifthly, a chain of multiple reactions then followed i.e, Sheikh Abdullah's attitude towards Jammu; the Praja Parishad agitation; the role of its sympathetic organisations in India;

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its reactions in the valley and their counter reactions in India; the planned process of precipitating a conflict between Kashmiri Nationalism and Dogra Nationalism and Ladakh and Doda's demand for autonomy had thus, created conditions favourable for the disintegration of the State.

One may discern behind all the political drama on the stage, a deep seated search for security on the part of the Dogra Nationalists and Kashmiri Nationalists. The popular sentiment in Jammu region believing their greater security to be within Indian Union, demanded full integration of the state with India and the abrogation of Article 370 under which the state secured special status. The popular sentiments in Kashmir region, on the other hand, believing their security only in democracy which among other attributes, means majority rule, wanted maximum autonomy and stood for limited accession of the State within the Indian Union. Thus making Article 370 as a permanent feature of the Indian Constitution. As a result the attitude of the Dogra Nationalists and the National level parties of India had led to polarising effect on the Autonomists and Secessionists in the valley. Sixthly, the emergence of sudden but an open rift in the Sheikh Abdullah's cabinet in August 1, 953, dismissal of his first popular elected ministry and his subsequent arrest in the early hours of August 9,1953 and taking over premiership of the State by Bakshi Ghulam Mohd created a serious constitutional crisis in the State which was the result of the motivational variations arising out of varied political considerations and failure of the leadership at various levels to reconcile the various claims and aspirations. This caused a serious statement for some time in the functioning as well as unconstitutional making in the Kashmir's Consembly. Lastly, the delay caused because of the change of Government and Leadership in the State as well as in the Consembly due to the Constitutional crisis which necessitated the reconstitution of the some of its special committees.

13.2. Relations with Indian Union

With the failure of the Indian National Congress and All Indian Muslim League to reach an agreement on the then fundamental issue of unity or division, the British Government presented what is known as Cabinet Mission Plan. According to the plan the Paramountcy was to lapse and the princes of the states would become free to decide about joining any of the two dominions-India and Pakistan or to remain independent. The plan was ultimately accepted by the leaders of both the Congress and the League.

As a result the Maharaja of Jammu and Kashmir by a letter dated October 26, 1947 to the Governor-General of India informed him that he had decided to accede to India and enclosed an Instrument of Accession

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with it. The Maharaja suggested for the transfer of only three subjects-The Defence, Foreign Affairs and Currency to the Central Government.. The Government of India accepted the request of the Maharaja and the Instrument of accession was signed on October 27,1947. The people of the state, in this way, tied their destiny to the people of the rest of India. Though the Accession was final, irrevocable and permanent in fact and in law, yet in keeping with their democratic ideals the Indian leaders had agreed to give the people of Kashmir, a chance to reaffirm their future affiliations. The Constitution of India, thus, provided that the only Art. 1 and Art. 370 would apply to their own force to Jammu and Kashmir. The application of the other Articles would be determined by the President inconsultation with Government of this State.

The above interim arrangement would continue untill the constituent Assembly of the state made its decisions.In pursuance of the above provisions of the constitution of India, the President of India then made the constitution(Application to Jammu and Kashmir) order 1950 in consultation with the Government of State, specifying the matters with respect to which the union parliament would be competent to make laws for the State. The Jammu and Kashmir Consembly, thus, ratified the state's accession to India in 1954. By virtue of the Instrument of Accession, the Central legislature could make laws for the kashmir State in respect of Defence, Foreign Affairs, Communication and Ancillary matters.

The provisions of the Constitution of India, as would be applicable to Jammu and Kashmir were then contained in the Constitution (Application to Jammu & Kashmir) Order 1954. Except with the agreement of the two governments, no change could be made in the extent of the executive and legislative power of the Union with regard to the state. Even the concurrent list of the constitution of India is not applicable to the state.

The constitution of Kashmir has thus, been so framed that the state can claim no power not conferred upon it by the constitution, but can exercise any power belonging to the state accept those of which it has been directly or indirectly deprived by the constitution.

13.3. Parliamentary type of Government

The Constitution provides the bi-cameral state legislature, the highest body, with the powers to legislate on all matters, except those with respect of which Parliament has the powers to make laws for the state under the provisions of the constitution of India.

The Consembly, however, favoured the Parliamentary type of Government not only because of familiarity with it but because it would be best suited the conditions prevailing in this heterogeneous state, which

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consist of three broad and distinct regions Jammu, Kashmir Valley and Ladakh. These regions have distinct regional and political personalities of their own. In fact, political and emotional divergence between regions has been growing over the years. In such a multi-racial, multi-religious multi-cultural and multi-lingual state, which comprised of three principal socio-cultural and disparate units and where exists communal dichotomy, regionalism and awareness of one's own cultural heritage, historical traditions and a sense of political individuality, great stresses and strains, contradictions and controversies, turmoils and clashes are somewhat natural. That is why the father of the constitution favoured a parliamentary system of government for the state. It also had a greater appeal to the lovers of democracy.

The legislature would consist of Sadar-i-Riyasat (The Constitutional Head of the State) and the two Houses-Legislative Assembly and the Legislative Council. The Legislative Assembly would consist of one hundred member (including twenty five seats kept vacant for the representative of the people living in Pak-occupied area of the state) chosen by direct elections from territorial constituencies. Whereas the Legislative Council would consist of thirty six members chosen in the manner provide in the Constitution (i.e. indirectly elected).

The superintendence, direction and control of government would vest in a Council of Minister headed by the Prime Minister, who would be appointed by Sadar-i-Riyasat. He should enjoy the confidence of the Legislative Assembly. The Consembly, however, provided for some of the conventions of Parliamentary government such as collective responsibility, majority rule etc. and left other conventions to take shape in the light of circumstances.

13.4. A Full Fledged Democracy Established

Disregarding the fact that the plant of Western democracy was foreign to our soil, the Constituent Assembly took the bold step of extending the right to vote from 6 per cent during Praja Sabha election of 1939 to universal adult franchise. Doubts have been expressed about the advisability of such a step which transferred power to the vast multitude of the state which was politically inert, financial weak and educationally backward. But in pioneering mood, the consembly provided it, in the hope that the simple but matured and intelligent villagers would soon learn the principle of democracy, little realising that democracy does not end with the ballot paper but begins with it and that it is way of life, a pattern of thinking and a unique sense of values.

Like that of Indian Constitutions, the Jammu and Kashmir Constitution also upheld the time honoured democratic principle "no taxation without representation".

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The state's Consembly like that of India, in all its thinking regarded the individual as a centre soul of all social and political relations.

A careful persual of the provision of the permanent Resident of the state mentioned in Part III and the Directive Principles of the state policy given in the part IV of the Kashmir's Constitution will confirm the view that the permanent Residents of the state are regarded as end and not as a mean and all the machinery of the state is directed to secure and work for their welfare.

It may be mentioned here that the Kashmir's Constitution, apart from the special rights and privileges of the permanent residents of the state, does not contain any bill of fundamental rights. The rights accorded to individual in chapter III of the Indian constitution are made applicable to them but subject to certain important qualifications and modifications.

As a logical consequence the state Constituent Assembly also accepted the twin-principles of liberty and equality as the basis of the new political order. The permanent Resident of the state, however, was never treated in isolation but always as a part of the social whole and whenever restrictions were placed on his rights, the object in view as always to secure the same rights effectively and equally to all the members of the community.

Besides, justice, which is the basis of social order and good government, pervades in Kashmir's Constitution. Realisation of justice in all its aspects-social, economic, and political-has been declared to be the solemn duty of the state.

The preamble of the Kashmir's Constitution has declared the resolve of the people of the state to secure to all permanent residents political, social and economic justice, liberty of thought, expression, belief, faith and worship. It has proclaimed its faith in the doctrine of equality of status, and opportunity to all its citizens and has expressed the hope that a sense of fraternity would prevail by which the dignity of the individual and unity of nation would be guaranteed. The aspirations contained in the preamble has been concretized in chapters dealing with Fundamental Rights and the Directive Principles of State Policy.

Social justice has also been secured to its citizens by abolishing titles, and class, creed and sex distinctions by providing for the abolition of untouchability. The state is also directed to combat ignorance, superstition, fanaticism, communalism, racialism, cultural backwardness and to foster brotherhood and equality among all communities under the aegis of a secular state.

Since the main anxiety of human beings is economic rather than political, economic justice has also been given an important place in the Constitution. The state is, therefore, directed to secure within its economic

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limits, the then widely accepted right the right to work to the permanent residents of the state. It has also provided that the health, and strength of the workers be not abused and the permanent resident may not be forced by economic necessity into vocations unsuited to their sex or strength. It has also laid down that all workers would be allowed reasonable, just and human conditions of work with full enjoyment of leisure and social and cultural opportunities and for permanent residents of the state the assistance and other social securities in old age, sickness, disablement, unemployment and other cases of undeserved want.

For the establishment of a "socialistic Order" of the society the state is directed to promote the welfare of the masses by establishing and preserving a socialist order of the society wherein all exploitation of man be abolished and justice-social, economic and political shall inform all the institutions of national life.

As the vast majority of people live in the country side, the state has been directed to ensure speedy improvement of the standards of living as well as the prosperity of the rural masses.

Political justice has been provided for by guaranteeing separation of executive from the judiciary in the public services, to secure a judicial system which would be humane, cheep, certain, objective and impartial. It shall also strive to ensure efficiency, impartiality and incorruptibility of its various organs of judicial administration and public utility. In this way, justice has been made the corner stone of the philosophy of the Kashmir Constitution.

13.5. Philosophy of Constitution

So far as the philosophy of the Constitution is concerned I may point out that the Constituent Assembly in giving shape to the Constitution worked on the basic foundation of certain principles. In other words the farmers of the constitution generally state their objectives in the beginning and hen they try to incorporate those objectives into the provisions of the constitution.

For instance the Declaration of the American Independence 1776 laid down the twin ideals of equality of men and securing to them certain inalienable rights *i.e.* the rights to life, liberty and pursuit of happiness". The French Declaration of the Rights of Man and Citizens 1789 spoke of the equality of men and guaranteed to them the rights of "Liberty, Property, Security and Resistance to Oppression". The New Kashmir Plan of National Conference spoke of " The Union of different regions of the state based upon fullest equality and self-determination, to raise the people from the abyss of oppression and poverty, degradation and ignorance into a sum-let valley of plenty, ruled by freedom, science and honest toil". The

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proclamation of Maharaja of Kashmir on March 5,1948 spoke of the establishment of "a fully Democratic Constitution based on adult franchise with a hereditary ruler as a constitutional head, adequate safeguards to the minorities and guaranteeing freedom of conscience, freedom of speech and freedom of assembly".

Sheikh Mohammad Abdullah the then leader of the House while presenting the broad objectives of the constitution to the constituent assembly on November 5,1951 "stressed the desirability of adopting rule of law, independence of judiciary, fundamental rights such as right to equality, freedom of expression and the values pertaining to the socio-economic justice". He pleaded that full consideration should be given to the existence of various sub-national groups in the state as well as the basic unity of it. He once again stressed that, the new constitution must afford the fullest possibilities to each of these groups to grow and flourish inconformity with their respective cultural characteristics, without detriment to the integral unity of the state or requirements of its social and economic policy".

A perusal of his address indicates that he, his party and the fathers of the Kashmir's constitution were considerably influenced by the liberal, democratic traditions of the west, which, incidentally had also influenced the making of Indian Constitution. They also subscribed to certain socialistic values and concepts such as that of socio-economic justice ; the land to the tiller, without compensation to expropriated land-owners, etc. These were in fact are reminiscent of a Marxist norm. It seems that two main streams of the western liberal political traditions and the Socialism slightly coloured by the Marxist traditions, both clamour for attention on the party, its leaders and the constituent Assembly. The fathers of the Kashmir's Constitution were, thus, considerably influenced by a kind of a 'mix' of the two traditions- the 'western' and the 'Marxist', two different ways of life and a kind of amalgam of the values belonging to each tradition.

In short the overall fact remained that the Kashmir's Consembly primarily projected a philosophy of democratic socialism.

For instance the Kashmir's Constitution of 1957, being based on humanitarian considerations, recognising the dignity of man; guaranteeing against exploitation and communalism; up holding the principles of secularism; parliamentary democracy; separation of judiciary ; the legislature and executive and building a socialist partner of the society etc. indicates the tenants of liberal and democratic traditions of the West. Whereas the termination of the institution of hereditary rulership; land to the tiller, without compensation to expropriated land lords; the symbol of the plough in the state's flag and its red colour resembling to the then communist flag indicates the till toward Marxism.

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In other words, as the two philosophies or ideologies vied with each other to capture the leader's mind, the State Constituent Assembly was finally asked to incorporate democratic Socialism, some what in the same way as the Indian Constituent Assembly had done with reference to the Constitution hammered into shape by it. The State Consembly final opinion in favours of "no compensation to the land owners in the largest contest of the "land to the tillers", was a sort of a pinch of salt or spice thrown into the cauldron of the new polity, in which what was mainly cooking up was a sort of Democratic Socialism".

To reiterate, once again, that the philosophy which is largely a minated the framing of the constitution in Jammu and Kashmir State is that of Democratic Socialism.

13.6. Works of the Constituent Assembly Re-examined

As we are inching our way to the tail of the epilogue, it may be pointed out that in spite of the above achievements the working of the Kashmir's Consembly has been subjected to severe criticism as there was absence of opposition and only one party-the All Jammu and Kashmir National Conference-represented in the Consembly. The opposition was, therefore, voiced from outside. Even some of the pro-Abdullah members, unless they happened to be in prisons, played a limited role of opposition in discussions relating to the Constitution than in making in post August 1953.

There was a tendency to over represent majority and under represent minority groups in the various committees sometime without bathering much of the member's qualifications and capabilities. From females, there were two members and that too from Jammu region. The majority of members of the special committees wer educated. Most of them were law graduates as well as those who had taken part in the struggle for freedom in Kashmir. Majority of members had neither previous legislative, administrative nor local government experience. Empirical investigation revealed certain facts about the working of the various committees. Though seventy per cent members were of the view that decisions in the committees meetings arrived at after free and frank discussions yet others were of the view that decisions were made outside the committee-and committee's members simply confirmed them. They further said that the decisions were made up by two or three important party leaders and other almost dotted their decisions.

Although the overwhelming majority of the members, who were not members of the drafting committee, mentioned that there was one and the only one draft constitution presented by the drafting committee, yet one-third of such members were of the view that there were two drafts.

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Very few members happened to articulate on the floor of the Consembly. Whereas overwhelming majority remained silent but voted when the occasion so demanded.

All amendments, except one, which were discussed and adopted, had been sponsored and moved by the Ministers. Some of the members were not at all serious as they were either absent at the time when the amendments sponsored by them were to be taken up for discussion or even though present, they dropped their move. Most of the amendment were withdrawn after a brief discussion. In some cases the mover withdrew the amendment without giving any reasons thereof.

While the top leadership was keen to project a secularist, socialist and democratic perspective in the debates of the Consembly, some others appeared to be dominated by communal and caste thinking. For instance the Harijan, the Sikh and the Backward classes members were keen to promote safeguards for the interests of their respective communities. Out of the two, one female member occasionally advocated she case of women whom she regarded more backward than menfolk.

Thirty percent of the members were of the view that the constitution was the result of action and inaction of internal and external influences. Whereas a few of them were of the opinion that the constitution was the result of outside influence.

It may also be stressed that the Kashmiri Leadership tended to move from 'Larger Autonomy' to limited autonomy after constitutional crisis of 1953. To achieve this in concrete terms, it embarked upon the policy of cautions and partial integration beyond the position already reached upon the time of dismissal of Sheikh Mohd Abdullah in August, 1953.

As a result the will to chisel a distinctive constitutional personality of the state became flabby. The constitution of Kashmir, 1957, took increasingly the shape of a carbon copy of the Indian Constitution with certain separate features to accommodate the political culture of Kashmir and local sentiments.

13.7. The Services of the Architects of the Kashmir's Constitution

Almost all the members of the Constituent Assembly barring a few of them deserve praise for the amount of labour and broad vision that they brought to bear on their work.

But there were some distinguished members who stood head and shoulders above others and had put untiring zeal in giving Kashmir state on the whole, the best possible and conceiable constitution. The foremost among them were Mr. M.A.Beg (Uptil August 1953) and Mr. G.L.Dogra

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after that. Both were the practising lawyers, had a sufficient social, political and administrative experience and were the chairman of the Drafting Committees. Mr. M.A.Beg remained member of the first J&K Legislative Assembly (Praja Sabha) from 1934 to 1943 and was imprisoned for participating ins struggle from freedom in Kashmir in 1938 and again in 1946. He presided over the then Drafting Committee and had spent hours in thrashing out of the legal implications of various provisions- a work in which he was helped by Mr. Justice M.A.Shahmiri- Legal adviser of the Consembly, Ghulam Mohi-ud-Din Hamdani, Mubarak Shah and Abdul Gani Trali in pre-August 1953. Likewise Mr. G.L.Dogra, the Chairman of the reconstituted Drafting Committee spend hours for scrutinising the reports of various committees as well as their constitutional proposals, and most of the time, with the help of one or two of his colleagues such as Mr. Mir Qasim and Mr. D.P.Dhar.

One third of the members of the Consembly were, however, of the view that two Draft Constitutions had been prepared by the Drafting Committees. The first Draft Constitution had been prepared by the Drafting Committee constituted on June 10,1952 under the Chairmanship of Mr. M.A.Beg. They stressed that the first draft was actually prepared by Justice M.A.Shahmiri, acting under the guidance of Sheikh Mohd Abdullah and Mr. M.A.Beg. The main features of that draft were as :

1. All districts of the State be given internal autonomy and a district would has power to join another district within a period of ten years. There would be a district council or Assembly in each district. It would be elected on the basis of adult franchise. The Council or Assembly would deal with the district affairs. Its administrative head would be a deputy commissioner who had to run administration in accordance of the decisions in the council or Assembly and the directions of the centre.

2. The whole state would be divided into five regions- Jammu, Kashmir, Gilgit, Ladakh and a Pahari region consisting of Bag, Muzaffarabad, Poonch and Rajouri. Each region be given larger autonomy. Each three of them i.e. Jammu, Kashmir and Pahari regions would have executive head-a council of Ministers- responsible to the provincial legislature. Ladakh and Gilgit would be administered by the Regional Councils.

3. At the Central level there would be a National Assembly under the leadership of the state Prime Minister. The constitutional head of the state would be Sadar-i-Riyasat.

4. It would be an independent state, federal in nature and having friendly relations with the neighbouring states.

5. The proposed constitution would promise progressive steps to be taken such as land reforms, village uplift, etc. etc.

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This draft constitution could not be presented in Consembly for deliberations because of constitutional crisis of 1953, the dismissal of Sheikh Mohammad Abdullah, his subsequent arrest on August 9,1953 and change of leadership and the reconstitution of the special committees including drafting committee.

Mr. G.L.Dogra, the Chairman of the reconstituted Drafting Committee had, however, submitted the Draft Constitution along with two notes of dissent to the Consembly on October 10,1956. His speech on the occasion of the motion for taking into consideration the Draft Constitution in the Consembly was a Marathon performance, in which lucidly explained some of its most fundamental features viz. Parliamentary democracy; responsibility of executive to the legislature; joint responsibility of the Cabinet; separation of the various powers of the state *i.e.* executive, legislative and judicial; the rule of law; and finally the future relation of the state with India and the rights of the permanent residents of the state etc. etc. and it gave ample evident of his erudition and fine grasp of constitutional law. The onerous duty of plotting the whole of the proposed consitution, clause by clause, through the constituent Assembly fell upon him and he acquitted himself creditably.

While Mr. G.L.Dogra's task was to give shape in words to the decisions of the consembly. The people who really guided the thinking of the consembly through the agency of the solid phalanx of the National Conference were Bakshi Ghulam Mohammad-the leader of the House-Mr. Mir Qasim, Mr. G.M.Sadiq, Mulana Sayeed Masoodi and Mr. D.P.Dhar.

Sheikh Mohammad Abdullah till August 1953 tried to hold aloft the then National conference ideals and principles and remained the members to keep their vision broad and to rise above petty things. His most memorable performance was his address on the occasion of moving the resolution on objectives on November 5,1951. It was marked by great moderation and statesmanship. He exercised a great influence in achieving the maximum autonomy for the state within the Indian Union as long as he was in power and remained the leader of the House.

As already pointed out that after the constitutional crisis of 1953 the mantle of the leadership in the Consembly fell on Bakshi Ghulam Mohd. He too tried his best to hold a loft the then National Conference ideals and principles *i.e.* limited autonomy and partial and causions integration with India. Though the basic foundations on which the Kashmir's constitution based secularism, democracy, equality and social and economic justice-remained the same, yet a shift in the party's policy from Larger Autonomy

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to Limited Autonomy took place. The then top Kashmiri leadership in power followed a course of "limited autonomy and partial and cautions integration, of the state within Indian union. Consequently the constitution of the state contains provisions to give effect to the policy formulated by the National Conference under the able leadership of G.M.Bakshi- the then leader of the house as well as Prime Minister of the State.

There were however, some members who distinguished themselves by making efforts in their way to improve the constitution. Among them were, S.Kulbir Singh, M.A.Beg, Mr. Mubarik Shah, Abdul Ghani Goni, Mr. Ghulam Mohd Beg. Hakim Habib Ullah and S.Harbans Singh Azad. Although most of the members of the consembly showed great moderation, accommodation and broad mindedness, yet there were hard core of staunch autonomists like Sheikh Mohd. Abdullah and Mr. M.A.Beg who striked hard to achieve maximum autonomy for the state within Indian Union. As opposed to them were the enlightened leaders like G.M.Bakshi, Mir Qasim, G.L.Dogra, Maulana Sayeed Masoodi, D.P.Dhar, Krishan Dev Sethi, R.P.Saraf and few others who changed their stand and favoured Limited Accession, and Partial and Cautious Integration with India.

When all is said, it will be the height of ingratitude to lose sight of the meritorious contribution of the one of the calmest statesmen of Kashmir Mr. G.M.Sadiq. Simple in habits, as in appearances his intellectual attainments of high order made the task of the constituent assembly easy and smooth and lent it "a prestige and historical value". He being the president of the state Constituent Assembly, not only presided over its proceedings but with his patience, for bearance, broad mindedness, ability, discipline, wisdom and forsightedness guided its deliberations with singular efficiency and without giving a cause for any complaint to any member. At certain occasions he actually participated in debates and demonstrated his ability in the shaping of state's constitutional destiny. More often he succeeded in getting certain recommendations of the Drafting Committee reconsidered by raising issues and setting the ball of discussion rolling in the House.

13.8. Estimates

The Jammu and Kashmir Constituent Assembly was not a revolutionary body and the background of its struggle for freedom from autocratic dynastic rule had a great bearing on the course of its proceedings. There were no passionate controversies except the relationship with the centre, and most of the questions were discussed in a most business like fashion.

The temper of Constituent Assembly, in contrast to that of the French Assembly but in striking resemblance to that of the American convention

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as well as of Indian Constituent Assembly was realistic and objective rather than idealistic and theoretical.

Whereas the Constituent Assembly of France (1789) formulated the Constitutional under the eyes and in presence of a tumultuous population of Paris, and the fathers of American Constitution held their meetings behind closed doors, the Kashmir's Consembly lik Indian Constituent Assembly avoided both the extremes and permitted the public and the press in its galleries, entry beginning regulated by pass-system.

While no official record of American Convention is available, the proceedings of Kashmir's Consembly like that of Indian Consembly were officially published and widest publicity was given to its work, thus keeping close to democratic traditions,

While concluding I may point out that it is the sheet anchor of these special relationships, as discussed above, that the state's constituent assembly has modelled the constitution of 1957 for which it was brought into existence way back on October 31st, 1951. I may however, justified for repeating the age old statement that "the constitution making is an uneasing and continuous process, being coextensive with a society under steady development and change. The constituent Assembly of the Jammu and Kashmir, therefore, formulated a constitution for the state which is on trial these days. The success or failure of the consembly's labours can best be evaluated after a generation or so. The constituent Assembly, keeping in view the overwhelming problems being then faced by the people of the state, made the best of its job. The success of a constitution, however, depends more on the manner of its working than on the provisions contained therein. The responsibility, therefore, lies on the shoulders of all right thinking individuals of state to let work this instrument of democracy to the best of its capacity and thus ensure the continued well-being of the people of Jammu and Kashmir state-the "heaven on the earth".

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WORK OF THE CONSTITUENT ASSEMBLY AT A GLANCE

1. Population of Jammu and Kashmir in 1951 : 29,50,975
(excluding Pak-Occupied Kashmir)

1.1. Kashmir Province was : 16,83,595

1.2. Jammu Province was : 8,28,912

1.3. Ladakh and Kargil was : 80,151

2. **Electoral Rolls**

2.1. Preparation of provisional electoral : Dec. 18,1950. began on.

2.2 These were published through out : June 4,1951 the state on.

2.3. Prefering of claims and objections : July 10,1951uptil.

3. Who could be entitled to be Every State subject, who included in Electoral Rolls was not declared of unsound mind by any court, and not disqualified from voting under provisions of any law relatingto malpractice and other offences in connection with election after the promulgationof the rule, could be eligible to be registered in the electoral rolls of any electorala area if he was 21 years of age on March 1,1957 and had been an ordinary resident of the electoral area for not less than one week during two years preceding Baisakh 2008 Bikrami.

4. Delimitation Committee :

The Delimitation Committee comprising a judge of J&K High Court-Justice M.A.Shahmiri -and four other members of the rank of Dy. Commissioner from the Rejvenue Department was set up on August 9,1951.

5. Representatives for as One nearly as 40,000 people were

6. Seats fix for Consembly 100

6.1. Kashmir province : 50

6.2 Jammu province : 25

6.3 Kept vacant for : 25

Pak Occupied Kashmir.

7. Election dates in September, 1951.

7.1. Ladakh : Sept 10,1951.

7.2. Kashmir : Sept 21,1951

7.3. Jammu : Sept. 30,1951.

8. Dates for submitting nomination papers, scrutiny and withdrawal:

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8.1. Ladakh

8.1.1. Last date for filing nominations 27.8.1951

8.1.2 Last date for scrutiny 29.8.1951

8.1.3.Last date for withdrawal 31.8.1951

8.2 Kashmir

8.2.1 Last date for filing nominations 30.8.1951

8.2.2 Last date for scrutiny 1.9.1951

8.3.2 Last date for withdrawal 3.9.1951

8.3 Jammu

8.3.1 Last date for filing nominations 18.9.1951

8.3.2 Last date for scrutiny 20.9.1951

8.3.3.Last date for withdrawal 22.9.1951

9. Number of voters expected to caste vote 15,46,000

9.1 Kashmir Province expected voters : 9 Lakhs

9.2. Jammu Province expected voters: 6.44 lakhs

9.3 Ladakh 23,000

10. Actual number of voters who voted in 16,01,185 election

10.1 No. of voters inKashmir province : 9,04,828

10.2 Jammu province : 6,58,317

10.3 Ladakh and Kargil : 48,040

11. All constituencies were : Single member constituency

12. Separate polling booths for : Women Voters

13. Maximum expenditure that Rs. 3000 or Two annas per was allowed to be incurred voter by a candidsate for the election.

14. As prevalent then in other Each box beared parts of Indiavoters in J&K too were distinct symbol or to indicate their preference colour by dropping a ballot paper into the box of the candidate preferred by them.

15. Constitutional Adviser of the Justice M.A.Shahmiri Kashmir Consembly, who too like Sir. B.N. Rau, during the discussion on framing Indian Constitution was not a member of the House.

16. Inaugural session held in Shergarhi 31st Oct. 1951 Palace which was convered in the Constituent Assembly Chamber, Srinagar at eleven of the clock on:

17. The oldest member elected as Maulana Mohd. Saeed temporary Chairman of the Masoodi. Consembly was;

18. The permanent PresidentMr. G.M.Sadiq of Consembly elected by the C.A. On Nov. 1, 1951 was ;

19. Appointment of Committees

19.1 Procedure Committees:

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19.1.1 Committee on Rules of Procedure Nov. 1.1951.

19.1.2 Finance Committee Nov. 5,1951.

19.1.3 Steering CommitteeL Nov 5,1951.

19.2. Special Committees

19.2.1. Committee to Examine or otherwise Nov.6,1951 of the payment of the compensation for land expropriated under the provision of Big Landed Estate Abolition act 2007 appointed on:

19.2.2. Advisory committee regarding Nov 7,1951.Fundamental Rights and Citizenship appointed on

19.2.3. The Basic principles committee Nov. 7,1951 appointed on

19.2.4 Emblem Committee appointed March 31,1952. on

19.2.5 Drafting committee appointed June 20,1952 on

20. Reconstitution of Some of the special committees because of constitutional crisis of August 1953.

20.1 Basic Principles Committee on Oct 20,1953.

20.2. Advisory Committee regarding Oct 20,1953.Fundamental Rights and Citizenship.

20.3 Steering Committee Oct 20,1953.

20.4.Drafting Committee Oct 20,1953.

21. Reports of the Committee Submitted Adopted

21.1. Resolution regarding June 7,1952 August 11,1952 the flag for the state.

21.2. The interim report of June 10,1952 June 12,1952 the committee

21.3. Report of the Basic Feb 3,1954 Feb 6,1954 principles committee

21.4. Report of the Emblem Nov 12,1952 Nov 12,1952 Committee

21.5 Report of the Advisory Feb 3,1954 Feb, 6,1954. Committee on Fundamental Rights and Citizenship

22. The Reports of the Drafting Committees

22.1. The Report to August 20,1952 August 21,1952 implement the resolution of the Consembly regarding termination of hereditary rulership in the state.

22.2. The Drafting Committee Feb 11,1954 April 16,1954. Report.

22.3. Drafting Constitution Oct.10,1956 Nov 17,1956.

23. Drafting Constitution presented in Oct 10,1956. the Consembly on.

24. Draft Constitution consisted of 158 clauses and 6 schedules

25. Days devoted for the 14 days consideration of the Draft Constitution

26. Third reading of Draft Constution Nov 17, 1956 concluded and constitution adopted by C.A. on

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27. The new constitution consist of 158 clauses and 6 schedules

28. Last meeting of the Constituent Jan. 25,1957 Assembly.

29. Number of Amendments 52 to the Draft Constitution submitted in the Constituent Assembly was

29.1. Amendments moved,Discussed and adopted 9

29.2. amendments discussedand rejected by the House 1

29.3. Amendments moved but withdrawn by the mover after discussion 15

29.4. Amendment standing against the name of the movers but not moved at all on account of either their absence or their dropping the move. 24

29.5. Amendments move but not discussed as none seconded them. 2

29.6. Amendments moved, seconded and discussed but not shown in the record whether it was withdrawn or voted down on discussion.

30. Amendment actually moved 28.

31. Kashmir's Constitution of Mid night
1957 came into force at : Jan 25-26,1957.

32. Formal dissolution of the Mid night Kashmir CA on Jan 25-26,1957.

33. Approximate expenditure on Rs. 20,77,506.
Constituent Assembly.

33.1	1951-52	Rs.229760 approx.
33.2	1952-53	Rs. 306346
33.3	1953-54	Rs. 340200
33.4	1954-55	Rs 359100
33.5	1955-56	Rs. 481200
33.6	1956-57	Rs 360900 approx.

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APPENDIX I

MEMORANDUM SUBMITTED TO LORD READING ON OCT. 27, 1924

1. Proprietary rights in land should be granted to the tenants, as these had been forcibly snatched away from them.

2. Muslim representation in the State Council should be according to their ratio in the population.

3. In order to give Muslims effective representation in the Services, all future vacancies be made available to them and in case Muslims with requisite qualifications were not locally available, Muslims from outside Kashmir, be appointed till such time as the local talent was available.

4. To weed out corruption from Services which had exceeded all limits, an impartial tribunal be appointed to inquire into these complaints and award punishment.

5. Since agriculture was the principal occupation of the people, the Governor of Kashmir valley should be a Muslim and if Muslims of requisite qualifications are not available, some Englishman may be appointed to the post. Similarly Muslims should be appointed posts such as the Superintendent of Police, the Assistant Superintendent of Police, Superintendent Customs, etc.

6. The cases registered against labourers of the Silk Factory be made over for trial to a tribunal which should consist of at least two law-knowing and impartial Judges, one of whom must be a European.

7. Since the entire labour force of the Silk Factory consists of Muslims, it is essential that the latter be appointed to higher administrative posts in the factory.

8. The Department of Shali (rice) should be liquidated and the restrictions, imposed on the import of food grains from outside the State, be removed. In order to reduce the burden on the peasants who had to pay the revenue in the form of Shali, food rationing in Srinagar be restricted to poor people only.

9. A Muslim or European expert on education be appointed to look after Muslim education. Compulsory free primary education be introduced and the same be initiated from Srinagar city. Muslims be recruited both as teachers and inspectors in greater numbers and sufficient number of scholarship be made available to them for higher education in India and abroad.

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10. Free forced labour should be completely abolished and replaced by contractual labour.

11. The lands that had been forcibly and illegally seized from Muslims and awarded to non-Muslims, should be restored to their respective owners.

12. An elected Legislative Assembly which should also work as a Constituent Assembly for the drafting of a Constitution for the State, be set up immediately. Muslim population must be kept in view while granting representation to the various communities.

13. The Government contracts, particularly those relating to forests, roads and construction, should be granted to State nationals in general and to Muslims in particular.

14. The Mosques and other religious properties which are in possession of the Government be immediately restored and steps be taken to ensure that Muslim religious places and graveyards remain protected from future encroachment by non-Muslims.

15. Access of six pies per rupee charged with the land revenue from Muslims for the repairs of Jamia Masjid Srinagar be made permanent provided half of it is spent on the repairs of other historical shrines and the other half on the advancement of their education ; provided further, a Board consisting of Muslims is constituted to administer the Fund.

16. A Commission composed of impartial European officers be appointed to inquire into Muslim grievances regarding the Zuljinnah procession, the incident at Khanqah-e-Shah-i-Hamdan and those relating to Islamabad and Baramula.

17. Since the rights of Muslims are insecure and are trampled under by the local authorities, the Resident of Kashmir be made answerable for their plight.

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APPENDIX II

THE NATIONAL DEMAND

As is now well known there is a nation-wide movement afoot among the people of the Jammu and Kashmir State to bring about a complete change in the social and political outlook of the people. This movement is not confined to any particular community or section of the public but all classes of people have begun participating in it with the fullest consciousness of the issues it involves. But we do make it perfectly clear at the very outset, that our loyalty to His Highness' person and throne is unswerving and needs no reiteration.

The ultimate political goal of this movement is the achievement of complete Responsible Government under the aegis of His Highness the Maharaja Bahadur. But as sponsors of this National movement we fell that it is our bounden duty to acquaint all our country-men as also others who are interested in it of the immediate objective we have in view. It is with this purpose that we are issuing the present manifesto and we sincerely trust that it will not only convey a fair idea of our immediate aims to all concerned, but also remove all those misunderstandings that are being deliberately disseminated from various interested quarters. Our movement is essentially a movement of peace and goodwill. Immediately, it aims at securing the elementary and basic rights of citizenship. It shall certainly try to bring about such a State of affairs in this country as would make it possible for even the humblest subject of His Highness to contribute to making of his own destinies. Our demands are modest, but they have the force of reason and justice behind them. Not that we are not conscious of our limitations. Not that we are not fully aware of the fact that the Government knows its mind and has resources at its disposal to enforce its will. But in the soul-stirring words of Pt. Moti Lal Nehru, "However much we may be enfeebled in body, our soul has never been nor will ever be killed.".

Our movement has a gigantic urge behind it. It is the urge of hunger and starvation which propels it onwards in most adverse circumstances.

The ever growing menace of unemployment amongst our educated youngmen and also among the illiterate masses in the country, the incidence of numerous taxes, the burden of exorbitant land revenue, the appalling waste of human life due to want of adequate modern medical assistance, the miserable plight of uncared for thousands of labourers outside the State boundaries, and in face of all this the patronage that is being extended by

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the Government in the shape of subsidies and other amenities to outside capitalists, as also the top heavy administration that daily becomes heavier, point to only one direction that present conditions can never be bettered as long as a change is not made in the basic principles that are underlying the present system of Government.

Ours is essentially an age of progress. Systems that were in vogue yesterday are pronounced obsolete to-day. Fresh forces are daily making their appearance on world's State. In British Indian Provinces fullest autonomy has been introduced and before long they will have a large measure of responsibility at the centre. These are all our neighbours and some of them can in no way favourably compare with us in the matter of population, literacy and other tests. Can we remain untouched by all this ? It is impossible for any power on earth to crush an idea when it has once taken root in men's minds. An idea, all of us know, has been pronounced as the most dynamic of all world forces. The force of this argument has not failed to make an impression on the minds of such British Statesmen as Lords Winterton and Lothian who have more than once expressed themselves in sympathetic agreement with the legitimate aspirations of the State subjects.

Our cause is both righteous, reasonable and just. We want to be the makers of our own destinies and we want to shape the ends of things according to our choice, of course under the august patronage of His Highness.

We have also come to the conclusion that without such a change it is impossible for the communities individually or the country collectively to progress. We are, therefore, of this firm belief that the Government of His Highness should before long be modelled on the following lines :

(A) The present system of administration in the State shall be replaced by Responsible Government subject to the general control and residuary powers of His Highness the Maharaja Bahadur as hereinafter mentioned.

(B) The Ministry shall be responsible to the Jammu and Kashmir Legislature and shall have, subject to such responsibility, power to control and expenditure of the revenues of the State and also to make such grants and appropriation of any part of those revenues, or of any other property, which is at present under the control or disposal of the Council as reserved expenditure, save and except the following, which shall remain under the control of His Highness the Maharaja Bahadur :

1. Expenditure of the Military services. 2. Expenditure classes as political and foreign. 3. Payments of all debts and liabilities hitherto lawfully contracted and incurred by His Highness in Council on account of Government of Kashmir. 4. The Dharmarth Trust.

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(C) The principle of Responsibility to the Legislature shall be introduced in all branches of administration of the Government subject to general control, reservations and residuary powers vested in His Highness in respect of control of Military, foreign and political affects etc., provided that the proposal of His Highness for appropriations of any revenues or moneys for Military, or other expenditure for foreign and political purposes, shall be submitted to the vote of the Legislature, but that His Highness shall have power notwithstanding the vote of the Assembly to appropriate upto a fixed maximum any sum His Highness may consider necessary for such expenditure.

(D) The Legislature shall consist contirely of members elected by constituencies formed on the system of adult franchise provision should be made for the representation of labour, trade, landlords and educational interests in the Legislature by means of election.

(E) The election to the Legislature shall be made on the basis of joint electorates ; seats should be reserved for the minorities and all other safeguards and weightages would be guaranteed to them in the Constitutions for the protection of their legitimate linguistic, religious, cultural, political and economic rights according to the principles enunciated, accepted or acted upon by the Indian National Congress from time to time. In addition to the above the religious rights and sentiments of all the communities should always be respected and not interfered with.

(F) All the subjects of State, without distinction of creed or caste, shall be admitted for services in all armies of defence and for that purpose His Highness shall be assisted by a Minister responsible to the Assembly.

(G) No subject of His Highness shall be liable to suffer in liberty, life, property, or of association and free speech or in respect of writing except under sentence by an ordinary Court of Justice and as a result of lawful and open trial.

We have given in a nutshell our immediate objective. We know that all this cannot be given for the mere asking. It requires wise Statesmanship from the side of the Government. Our earnest desire is to avoid a strife. Let Government make an announcement accepting the above principle, and if His Highness' Government is pleased to discuss these principles with us we shall certainly and whole-heartedly co-operate for this purpose. We are sure that if this is done there will reign peace all round.

(Sd.) S.M. ABDULLAH, KASHYAP BANDHU, M.M. SAEED, G.M. SADIQ, P.N. BAZAZ, S. BUDH SINGH, JIA LAL KILAM, G.M. BAKSHI, SHAM LAL SARAF, SHAMBOO NATH PESHIN, M.A. BEG, AHMAD YAR, AUGUST 1938.

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APPENDIX III

THE ALL J&K NATIONAL CONFERENCE'S MEMORANDUM TO CABINET MISSION (1946) KASHMIRIS DEMAND FREEDOM

A People Sold into Slavery, Kept Down Under a Corrupt, Autocratic Regime for a Century

Today the national demand of the people of Kashmir is not merely the establishment of a system of responsible Government, but their right to absolute freedom from the autocratic rule of the Dogra House.

Nearly the hundred years ago the people of Kashmir became the victims of a commercial deal by the covetous agents of the East India Company.

For a paltry consideration of 75 lacs of sikh currency rupees (less than half a million pounds sterling) the people of Kashmir, the land and its potential wealth, were sold away, to Maharajah Gulab Singh, the Dogra vassal of the Sikh kingdom.

The Sale Deed

We challenge the moral and political validity of this sale deed, to which the people of Kashmir were never a party, and which has since 1846 been the document of their bondage.

At this moment, the future of the inhabitants of India is on the anvil, and the Constitutional pattern of the future is being hammered out by the British Cabinet Mission.

The question of the Treaty Rights of the Princes has become a moot point between the peoples of the States, the Princely Order, and the Paramount Power.

For us in Kashmir the re-examination of this relationship in its historical context is a vital matter.

The crux of our contention is this that the sale deed which brought Kashmir under the rule of the Dogra House confers no privileges equivalent to those claimed by States governed by the so-called Treaty Rights..

As such, the case of Kashmir itself stands on a unique footing, and the people of Kashmir draw the attention of the Cabinet Mission to their just claims to freedom on the withdrawl of British Power.

The sale deed of 1846 misnamed the Treaty of Amritsar, makes the matter quite clear.

No sale deed, however, sacrosanct, can condemn more than four million men and women to the servitude of an autocrat when the will to live under his rule is no longer there.

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We, the people of Kashmir, are determined to mould our own destiny and we appeal to the members of the Cabinet Mission to recognize the justice and the strength of our cause.

Kashmir is not merely "a geographical expression" in the North-West of the vast sub-continent of India, famed for its beauty and natural wealth, but it is a land strategically situated, the meeting point of India, China and Russia, and as such has international significance.

Our homeland is the cradle of the Kashmiri nation which by virtue of the homogeneity of its language, culture and tradition and its common history of suffering is today one of the rare places in India where all communities are backing up a united national demand.

Our Plight

The immensity of the wrong done to our people by the sale deed of 1846 can only be Judged by looking into the actual living conditions of the people of Kashmir. It is the depth of our torment that has given strength to our protest.

The State of Jammu and Kashmir is the biggest of the Indian States, covering 84,471 square miles of mountains and lowlands. Its revenues exceed $2\frac{1}{2}$ crores of rupees, and it ranks as the third richest State in India.

Between the snow-adorned barrier ranges of the Himalayas and the earth-coloured and sun-scorched plains of the Punjab live our people, four millions of them, in Jammu and Kashmir, Ladakh and the Frontier regions in Poonch and the Chenani ilaqas, Muslims, Hindus, Sikhs, Buddhists, Christians, Kashmiri Pandits, Jains and Harijans inhabit the summer and winter capitals of Srinagar and Jammu, thirty-nine towns and nearly nine thousand villages.

Ninety-six out of every hundred of our people draw sustenance from the land, and live in farflung and isolated villages, oppressed by want and harried by disease. Their average yearly income barely reaches eleven rupees per head.

It is this poverty-stricken land which was transferred a hundred years ago in 1846 by the Treaty which, signed in the days of Cobden and Bright, claims to hold Kashmir in bondage even a quarter of a century after the fall of the Czarist Empire.

British Imperialism continues to stand guarantor of the sanctity of such treaties.

The age of liberalism and reform came and went, the era of revolutions blazed its tail across history but the land of Jammu and Kashmir remained in the dark hinterland of medieval traditions.

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It was in the thirties, nearly a decade and a half ago, that the Kashmiri people took their own destiny in their hands and launched a mass struggle to wrest their rights of free civic existence from an autocratic Government.

This people's movement, born as the Muslim Conference in 1932, became the spearhead of the masses of Kashmir, more than three-quarters of whom are Muslims.

It is during this period that the whole of India was shaken into new awakening following the Civil Disobedience Movement of 1931.

The Conference, though Muslim in name, spontaneously formed as an expression of the deep-rooted sufferings of the people, was in spirit national and was concerned with the welfare of all communities.

On the March

Our movement has been dynamic, and, as the years went on, it has rooted itself more and more deeply into the soil of the State.

In 1939 we formally converted the organisation into All Jammu and Kashmir National Conference ; thus welcoming into our fold freedom-loving patriotic people from all communities.

We have weathered many storms, repression, jail and bullets in the struggle against the State authorities and their props those with feudal and vested interests in the exploitation of the people.

Thus the fight of the National Conference has been against the immemorial poverty of the peasant and the artisan, and the unmitigated helplessness of the worker.

The Conference has grown from strength to strength by virtue of its democratic ideal and its over-expanding mass following. During the whole of this period of growth we have been pressing for responsible Government and the economic amelioration of the people of the State.

1934 Constitution

We reached our first Constitution milestone in 1934 when the Legislative Assembly was constituted, consisting of 75 members, out of which however 42 were nominated and only 33 were elected. The President was also an official, and the Council of Ministers continued to govern as an irresponsible executive at the pleasure of His Highness the Maharajah Bahadur.

At the end of the first elections, the representatives of the people entered the Assembly and constituted the largest single homogeneous group. This group has carried on our struggle right inside the walls of the Assembly Chamber.

This setting up of the Legislative Assembly and the so-called Constitutional advance which came subsequent to it only created an illusion

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of reforms without any substratum of reality, since there was no actual power in the hands of the People's representatives.

Before we go into a detailed analysis lying bare the utter inadequacy of such make-believe progress, it is of importance to expose the sinks of reaction, bestial cruelty and corruption hidden beneath this modern façade of Constitutional reform.

Chenani in Chains

A typical illustration of what is happening in the backward areas of Kashmir is to be found in the Jagir of Chenani, a State within a State, which is today on the verge of rebellion, because of the intolerable misrule of an autocratic princeling.

Few of those who pass through Kud, on the Jammu Srinagar highway, realise what shameless robbery of human rights takes place in the territory of which it is a part.

The Jagirdar has got unlimited power over his subject. The lives and property of the inhabitants of Chenani have been for years the play-things of arbitrary powers.

He monopolises trade and production and illegally seizes land on the flimsiest pretexts, and since the police, the jails, and all the machinery of law is in his own hands there is nobody to put a stop of his activities.

He is the collector of taxes, controller of food, civil and criminal Judge all rolled into one.

He is also a shop-keeper dealing in controlled commodities and a money-lender who gives loans to his pauperised peasantry on usurious rates of interest.

In him are vested the powers of Sessions and District Judge with appellate jurisdiction.

Curiously the Rajah is almost illiterate and therefore unacquainted with the barest principles of law.

Those who have dared to raise their voices against these inhuman conditions in order to help their fellow subjects have been arrested, tortured and imprisoned.

Limited Franchise

Thus, it is against this background of darkness and oppression that we have to consider what the Government really stands for, and we would not limit ourselves to conditions in the big towns of the State which, though bad enough, are by comparison better. The hollowness of the 'democratic' structure which has been so far put up is revealed by the character of the franchise itself the limitations of which were recommended by the Franchise

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Committee of 1934. A more correct name for the Franchise Committee would be the Disfranchisement Committee, since 97% of the population were denied the right to vote.

This right was allowed only on a property and educational basis to the following categories of people :

(*a*) Payment of Rs. 20 as land revenue.

(*b*) Ownership of Rs. 600 worth of House property.

(*c*) Payment of Rs. 20 as Municipal Tax.

(*d*) Payment of Rs. 60 as rent.

(*e*) Education up to Class 8th.

(*f*) Holding of a title.

(*g*) Being a village headman, or holding any other such honorary office of distinction under the Crown.

(*h*) Being a pensioner.

The farce of the educational qualification is apparent from the fact that, in addition to being below the required tax level, the Muslim population which forms more than 80% of the population of the State is only 4% literate.

Farcical Amendments

In 1930, the Constitution was amended and the elective element in a total House of 75 was raised to 40. This increase of seven members who are elected is deceptive, since they represent only special constituencies of big landlords, rural barons, Government pensioners and the franchise is so restricted that in one constituency there are only 15 electors and in another just 16.

Four posts were created for parliamentary under secretaries from amongst the non-official members.

The fact that they were appointed by His Highness on a salary of Rs. 200 per month, at once, severed their allegiance from their respective electorates and hitched it to the Government instead.

This aspect of the so-called reforms tantamounts to the reduction of the elected strength in the House.

The President of the Legislative Assembly is appointed by His Highness and is usually nominated from amongst the Judicial or executive officials of the State.

In addition, there is nothing to prevent the President from discharging other offices besides his own.

One of the President was all at one time the Law Minister, the Chief Justice, the President of the Scholarship Board and the Acting Prime Minister. It might be regarded as a matter of congratulation that he was not also Commander of the State forces.

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The demarcation of constituencies throws still more light on the unreality of the Constitutional machine. Vast areas of the State, with hundreds of thousands of inhabitants, have been summarily robbed of the right to vote, because members representing them are nominated by the State.

As to the elective constituencies themselves, they provide comic contrast. One constituency No. 31 Hindu beginning at the door post of Kashmir, Kohala nearly 2,500 feet high, rambles on the snowy peaks, of the Amarnath Cave of pilgrimage (16,000 feet high), covering a distance of over 220 miles, some of it on mere mountain tracks.

While on the one hand in a special constituency fifteen Jagirdars representing its total electorate have a right to send one representative, on the other the general constituencies of Muzaffarabad and Handwara with a population of 300,000 and 270,000 respectively can send only one representative each.

Kashmir Budget

The test of the powers of every democratic body lies in its ability to exercise control over finances.

In our State to start with, but of the total expenditure, over 36% (representing the combined expenditure incurred on the army and the privy purse) is reserved from the vote of the Assembly, thanks to section 45 of the Constitution Act.

As to the rest and item of expenditure not assented to by the Assembly can be restored with the aid of proviso A of section 45 which vests the right of certification in the Council of Ministers. And the Council of Ministers is not responsible to the Assembly.

The most astounding aspect of our State army is to be found in the discrimination which forms the basis of recruitment to the State forces.

No Kashmiri be he is a Sikh, Muslim or a Kashmiri Pandit is allowed to join the State Army whose ranks are maintained as the exclusive preserve of certain castes in the Jammu Province.

Even during the war years Kashmiri fighters found opportunities for distinguishing themselves at arms only through joining the Indian Army.

It is a great stigma on our self-respect that the Kashmiris should be treated as a bought up race and at the same time be burdened with the huge Bill which they are asked to foot for maintaining this army of occupation.

Maharaja's Loot

The privy purse of the Prince is another key point in the finance of our State.

Ostensibly it is only 5% of the total income of the State, but departments like the Royal Stores, Ceremonies Department, His Highness' Motor Garages,

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the Hunting Lodges, are not included in the Privy purse although they are actually a part of it. They cost one and a quarter million rupees annually.

In addition also are the allowances for His Highness' Household, which come yearly to nearly half a million rupees. There is yet another item.

The State compensates His Highness the Maharaja for the personal jagirs which he had to surrender to the State soon after his accession to the throne to avoid the anomaly of being the Ruler and the subject at the same time. For that he is paid 8½ lacs of rupees annually.

In addition, His Highness enjoys immunity from Income Tax and Customs Duties – which though formally paid to the Treasury are reFunded at the end of the year. In the year 1930-31 alone Rs. 3,10,000 were reFunded in this manner.

Beneficent Departments

As to budget allocations for essential services, and nation-building departments – agriculture, horticulture, industry, veterinary services, co-operatives, panchayats, rural uplift – these amount to one quarter million rupees, and the expenditure on police alone exceeds one and a half million rupees.

Less than 9% of the total budget is spent on education and in spite of the vast areas to be covered there are less than a thousand primary schools, only nineteen high schools and not even a single girls' college.

The Medical Department controls only two hospitals worth the name – one at Srinagar and one at Jammu – and there are none in the vast frontier areas.

Three women's hospitals are totally inadequate and each Government dispensary serves an area of nearly 800 sq. miles, often intersected by mountainous tracts, and the ratio is 1 : 38,000 people.

Communications are rudimentary. An area of 85,000 sq. miles has only 500 miles of metalled roads. This includes 350 miles of the highways linking the State with the outside world.

Nothing better than this budget reveals the hollowness of such a limited experiment in Constitutional advance.

These mock reforms only injured the legitimate aspirations of the politically awakened masses of Kashmir and whipped them into conducting a more intensified struggle for the establishment of responsible Government.

In fact the period following the formation of the Legislative Assembly is replete with heroic examples of the peoples' struggle against barbarous repression.

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At long last, as a consequence of the growing strength of the movement of the people, His Highness announced in the year 1944 his intention to nominate two ministers from a panel of six names suggested by the Legislative Assembly.

Bartering Away the Future

This helplessness of an enslaved people has made the State a hunting ground of economic adventures, and the present administration have already given ample proof of their complete inability of safeguard the national interests of our people.

In fact, they have themselves become instrumental in bartering away the long-range interests of the people of the State to outside capitalists wishing to exploit the unrivalled natural resources of our country.

The most glaring instance of such a deal is provided by an agreement entered into by Prime Minister R.C. Kak on behalf of the Government of Jammu and Kashmir with New India Insurance Company of Bombay on 29th September, 1945, by virtue of which the Government have agreed to place with the company exclusively all the insurance of Government property inside the outside the State.

This agreement binding for seven years, has eliminated all fair competition from outside, and throttled the development of insurance inside the State. Hundreds of Kashmiri families living by insurance work have had their livelihoods jeopardised.

Tatas to Control Kashmir

Another example of a ruinous agreement of to exploit the State resources, is the sanctioning by His Highness the Maharaja of a contract with the Tatas. This gives them the exclusive right of developing or arresting the industrial development of Kashmir.

The signing of such an agreement without reference to the people gives the surest justification of a complete transfer of power to the elected representatives of the people. Complete freedom in its modern context is for us a matter of sheer survival.

The claim of the Kashmir people to be masters of their own destiny is reflected against the background history of exploitation and this new threat to its economic potentialities.

In the past, the British sold us away to feudal Dogra barons ; and on the centenary of our sale, this very Dogra House is selling our future to a family of commercial magnates in British India.

Thus at a time when the new world is being built on the foundations of the Atlantic Charter a new perspective of freedom is opening before the Indian people.

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The fate of the Kashmiri nation is in the balance and in this hour of decision we demand our basic democratic right to send our elected representatives to the Constitution-making bodies that will construct the framework of Free India.

We emphatically repudiate the right of the Princely Order to represent the people of the Indian State or their right to nominate their personal representatives as our spokesman.

We appeal to the democratic goodwill of the British Cabinet Mission not to betray the just aspirations of our people or underestimate their vital will to freedom.

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APPENDIX IV

INSTRUMENT OF ACCESSION OF .....

Whereas, the Indian Independence Act, 1947, provides that as from the fifteenth day of August, 1947, there shall be set up an Independent Dominion known as INDIA, and that the Government of India Act, 1935, shall, with such omissions, additions, adaptations and modifications as the Governor-General may by order specify be applicable to the Dominion of India.

And whereas the Government of India Act, 1935, as so adapted by the Governor-General provides that an Indian State may accede to the Dominion of India by an Instrument of Accession executed by the Ruler thereof :

Now therefore I ..... Ruler of ..... in the exercise of my sovereignty in and over my said State do hereby execute this my Instrument of Accession and :

1. I hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of ..... (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th day of August, 1947 (which Act as so in force is hereinafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by the Ruler of this State, then any such agreement shall be deemed to form

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part of this Instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act, or of the Indian Independence Act, 1947, unless such amendment is accepted by me by an Instrument supplementary to this Instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake the should that Dominion for the purposes of Dominion law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default, of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing in this Instrument shall be deemed to ..... commit me in any way to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future Constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this ..... day of August, Nineteen hundred and forty seven.

.....

.....

I do hereby accept this Instrument of Accession Dated this ... day of August, Nineteen hundred and forty seven.

.....

Governor-General of India.

Sd/- Mountbatten of Burma

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APPENDIX V

INSTRUMENT OF ACCESSION OF JAMMU AND KASHMIR STATE

Whereas, the Indian Independence Act, 1947, provides that as from the fifteen day of August, 1947, there shall be set up an independent Dominion known as India, and that the Govt. of India Act, 1935, shall, with such omissions, additions, adaptations and modifications as the Governor-General may by the order specify, by applicable to the Dominion of India.

And whereas the Govt. of India Act, 1935, as so adapted by the Governor-General provides than an India State may accede to the Dominion of India by an Instrument of accession executed by the Ruler thereof :

Now therefore I Shriman Indar Mahendar Raj Rajeshwar Maharajadhiraj Shri Hari Singhji Jammu Kashmir Naresh Tatha Tibbet Adi Deshadhipathi Ruler of Jammu and Kashmir State in the exercise of my sovereignty in and over my said State do hereby execute this my Instrument of Accession and ;

1. I, hereby declare that I accede to the Dominion of India with the intent that the Governor-General of India, the Dominion Legislature, the Federal Court and any other Dominion authority established for the purposes of the Dominion shall, by virtue of this my Instrument of Accession, but subject always to the terms thereof, and for the purposes only of the Dominion, exercise in relation to the State of Jammu and Kashmir (hereinafter referred to as "this State") such functions as may be vested in them by or under the Government of India Act, 1935, as in force in the Dominion of India on the 15th Day of August, 1947 (which Act as so in force is hereinafter referred to as "the Act").

2. I hereby assume the obligation of ensuring that due effect is given to the provisions of the Act within this State so far as, they are applicable therein by virtue of this my Instrument of Accession.

3. I accept the matters specified in the Schedule hereto as the matters with respect to which the Dominion Legislature may make laws for this State.

4. I hereby declare that I accede to the Dominion of India on the assurance that if an agreement is made between the Governor-General and the Ruler of this State whereby any functions in relation to the administration in this State of any law of the Dominion Legislature shall be exercised by

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the Ruler of this State, then any such agreement shall be deemed to form part of this instrument and shall be construed and have effect accordingly.

5. The terms of this my Instrument of Accession shall not be varied by any amendment of the Act or the Indian Independence Act, 1947, unless such amendment is accepted by an instrument supplementary to this instrument.

6. Nothing in this Instrument shall empower the Dominion Legislature to make any law for this State authorising the compulsory acquisition of land for any purpose, but I hereby undertake that should the Dominion for the purposes of a Dominion Law which applies in this State deem it necessary to acquire any land, I will at their request acquire the land at their expense or if the land belongs to me transfer it to them on such terms as may be agreed, or, in default, of agreement, determined by an arbitrator to be appointed by the Chief Justice of India.

7. Nothing on this Instrument shall be deemed to commit me in any way to acceptance of any future Constitution of India or to fetter my discretion to enter into arrangements with the Government of India under any such future Constitution.

8. Nothing in this Instrument affects the continuance of my sovereignty in and over this State, or save as provided by or under this Instrument, the exercise of any powers, authority and rights now enjoyed by me as Ruler of this State or the validity of any law at present in force in this State.

9. I hereby declare that I execute this Instrument on behalf of this State and that any reference in this Instrument, to me or to the Ruler of the State is to be construed as including a reference to my heirs and successors.

Given under my hand this 26th Day of October Nineteen Hundred and Forty-seven.

Sd/- Hari Singh

Maharajadhiraj of Jammu and Kashir State

I do hereby accept this Instrument of Accession. Dated this twenty-seventh day of October Nineteen Hundred and Forty-seven.

Sd/- Mountbatten of Burma

Governor General of India

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APPENDIX VI

BY HIS HIGHNESS RAJA RAJESHWAR MAHARAJADHIRAJ SHREE MAHARAJA HARI SINGHJI BAHADUR INDAR MAHINDAR SIPAR-I-SALTANAT-I-INGLISHIA MAHARAJA BAHADUR OF JAMMU & KASHMIR

A PROCLAMATION

(March 5, 1948)

In accordance with the traditions of my dynasty I have from time to time, provided for increasing associations of my people with the administration of the State with the object of realizing the goal of full responsible Government at as early a date as possible and in pursuance of that object have, by the Jammu and Kashmir Constitution Act of 1996 (Act XIV of 1996), established a Constitutional Government with a Council of Ministers, a Legislature with a majority of elected members and a Independent judiciary ;

I have noted with gratification and pride the progress so far made and the legitimate desire of my people for the immediate establishment of a fully democratic Constitution based on adult franchise with a hereditary Ruler from my dynasty as the Constitutional head of an Executive responsible to the Legislature ; I have already appointed the popular leader of my people, Sheikh Mohammed Abdullah as the Head of the Emergency Administration;

It is now my desire to replace the Emergency Administration by a popular Interim Government and to provide for its powers, duties and functions, pending and framing of a fully democratic Constitution ;

I accordingly hereby-ordain as follows :

(1) My Council of Ministers shall consist of a Prime Minister and such other ministers as may be appointed on the advice of the Prime Minister. I have by Royal Warrant appointed Sheikh Mohammed Abdullah as the Prime Minister with effect from Ist day of March, 1948.

(2) The Prime Minister and other Ministers shall function as a Cabinet and act on the principle of joint responsibility. A Dewan appointed by me shall also be a member of the Cabinet.

(3) I take this opportunity of giving once again a solemn assurance that all sections of my people will have to opportunity of service, both civil and military,

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solely on the basis of their merits and irrespective of creed or community.

(4) My Council of Ministers shall take appropriate steps, as soon as restoration of normal conditions have been completed, to convene a National Assembly based upon adult suffrage, having due regard to the Principle that the number of representatives from each voting area should, as far as practicable, be proportionate to the population of the area.

(5) The Constitution to be framed by the National Assembly shall provide adequate safeguards for the minorities and contain appropriate provisions guaranteeing freedom of conscience, freedom of the speech and freedom of Assembly.

(6) The National Assembly shall, as soon as the work of framing the new Constitution is completed, submit it through the Council of Ministers for my acceptance.

(7) In conclusion I repeat the hope that the formation of a popular Interim Government and the inauguration, in the near future, of a fully democratic Constitution will ensure the contentment, happiness and the moral and material advancement of my beloved people.

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APPENDIX VII

THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1950

In exercise of the powers conferred by Article 370 (1) (ii), the President of India issued the Constitution (Application to Jammu and Kashmir) Order, 1950, in consultation with the Government of Jammu and Kashmir and specified the matters with respect to which the Union Parliament would be competent to make laws for the said State. The subject-matter of the Order related mainly to the elaboration of the subjects already specified in the 'Instrument of Accession' ; but certain additions also made. Two schedules were added.

The first schedule related to the jurisdiction of the Union Parliament over the State and enumerated the appropriate items in the Union List of the Seventh Schedule to the Indian Constitution. The power of Parliament to make laws for the State was limited to the matters specified in this schedule. The items were :

(1) Defence : Entires 1 to 6.

(2) Preventive Detention for the reasons connected with defence, foreign affairs and the security of India : Entry 9.

(3) Foreign Affairs : Entries 10 to 22.

(4) Communications : Entries 25 to 31.

(5) Trade and Commerce with foreign countries : Entry 41.

(6) Matters relating to Parliament : Entries 72 to 74.

(7) Union Executive and Supreme Court : Entries 93 to 96.

Some other Entries like those of 'Audit of accounts' (Entry 76) and Railways (Entry 22) were applied with modifications.

The result of the application of this schedule was that both the Concurrent and the State List were made not applicable to Jammu and Kashmir State. Also, anything not contained in the first schedule was within the exclusive powers of the State. In effect this meant that the residuary power which in the case of other Indian States vested in the Centre, in the case of Kashmir was to belong to the State.

The second schedule tabulated the provisions of the Constitution which in addition to Article 1 and Article 370, were to apply in relation to Kashmir. The parts of the Constitution of India made applicable to the State were :

Part V : This part deals with the Union Executive. It was made applicable to Kashmir with some exceptions and modifications. The main exceptions

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related to the powers of the Supreme Court of India. The Supreme Court had only appellate jurisdiction in Kashmir. The reason for limiting the jurisdiction of the Supreme Court was the existence of a "Board of Judicial Advisers" in Kashmir, to which the appeals from the "High Court of Judicature" in Jammu and Kashmir State lay. The other exceptions related to the powers of the Comptroller and the Auditor General of India. He had no jurisdiction in the State.

Articles 80 and 81, which deal with the composition of the House of the People and the Council of States was to apply with some modifications, the effect to which was the representatives of Jammu and Kashmir in the Council of States and the House of the People respectively were to be appointed by the President of India in consultation with the Government of the State. In the case of other States, the representatives in the House of the People are elected directly by the people and in the Council of States by the Legislative Assemblies of the States. Articles 54 and 55 deal with the election of the President of India by the elected members of Parliament and the Legislative Assemblies. These articles were applied in Kashmir with the modification that the reference to elected members of the House of the People was also to include the 'appointed members' from Kashmir under Articles 80 and 81.

Parts XI and XII : These parts deal with the relations between Union and the States. Part XI was made applicable with some exceptions and modifications, the effect being that Legislative power over matters not enumerated in the Legislative List which in regard to other Indian States vested in the Centre, in the case of Kashmir belonged to the State itself. Parliament's power of legislation with regard to the State was limited to the items on the Union List prescribed in the first schedule to this Order. Neither the State List nor the Concurrent List were applied to the State, so that the question of repugnancy between laws on matters on the Concurrent List could not arise. Although item 14 on the Union List gives Parliament Legislative power with respect to agreements and treaties with other countries, yet since this ".. treaty making power cannot be used to do what the Constitution otherwise forbids", therefore, the Union Parliament could not legislate so as to dispose of the territory of the State in accordance with an international agreement. This was so because of the commitment of the Government of India that the power of finalise the future of the State vested in the State. Constituent Assembly.

Part XII deals with finance. Articles 266 and 267 which in relation to States other than Kashmir deals with distribution of public moneys between the Consolidated Fund, Public Records and Contingency Funds of the Union and the States and appropriations from them was in its application to Kashmir

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restricted to the Funds and Accounts of the Union. Article 282 empowering the Union or a State to make grants for public purposes and Article 283 empowering Parliament and a State Legislature to make laws regulating the payment, disbursement, custody and account of public monies were similarly restricted so as to apply only to the Union and Parliament in so far as Kashmir was concerned. The taxes, which in other cases were collected by the Union or by the State on behalf of the Union remained exclusively under the State control. The Income Tax department of the State was free from Central Controls. The State had its own Customs Department established during the British period. The collections accounted for a high proportion of State revenue. This department has since been amalgamated with the Indian Excise Department on the initiative of the State. So far as the administrative relations were concerned, the power of the Union in regard to Kashmir was soverely limited. Article 257 dealing with administrative control of the Union over the States generally, did not apply to Kashmir, with the result that the Union had no powers to give directions to Kashmir to ensure compliance with Acts of Parliament or to ensure that the executive power of the Union was not prejudiced. Nor could the Union give such directions regarding communications which it could give to other States. There was, however, an understanding between the Union and the State, that the State would not act in such a way as to give occasion for the issue of such a direction in the case of a State bound by the Articles.

Part XV : It deals with elections. This was made applicable to the State subject to some exceptions and modifications. Article 324 deals with the 'superintendence, direction and control' of elections. It applied in Kashmir only to the elections of the President and Vice-President of India. The Election Commission of India had no other jurisdiction in Kashmir ; elections to the State Legislative Assembly were to be governed by the laws of the State. As has been mentioned, the representatives of the State.to the House of the People were to be appointed by the President on the recommendations of the Government of the State and were not to be elected. Articles 325-329, which dealt with election to the Parliament and State Legislatures did not apply to the State.

Part XVI : Contains special provisions regarding Anglo-Indians, Scheduled Castes, Scheduled Tribes and Scheduled Areas. The only provision of this part which was made applicable to Jammu and Kashmir was the provision in Article 330, reserving seats for Scheduled Castes and Scheduled Tribes in the House of the People. But since there were no Scheduled Tribes in the State, therefore, the application of this Article was limited to the seats reserved for 'Scheduled Castes and Areas'. Article 334, which places a time limit on reservation of seats in the House of the People

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and State Legislature applied only in so far as it related to the House of the People. And Article 335 which calls for special consideration of the claims of Scheduled Castes and Tribes to appointment in the public services was applied only in so far as it related to the Union Services. The provision with regard to the reservation of seats in the State Assembly did not apply to Kashmir. The provisions for the appointment of a Commission to investigate into the condition of Backward Classes or of a special officer for Scheduled Castes did not apply to Kashmir.

Part XVIII relates to the official language. The provisions of this part were to apply only in so far as they related to the proceedings in the Supreme Court or the official language of the Union. No other provisions were applicable to it, which meant that the State language of Kashmir and the language for the proceedings of the State High Court were left to be decided by the Constituent Assembly of the State. The directive for the development of the Hindi language was not made applicable to the State.

Part XIX contains the miscellaneous provisions of the Indian Constitution. Article 361 provides that the President, Governors and Rajpramukhs are not liable to answer in any Court for acts done or purported to be done in the exercise of their official duties. The application of this Article in Kashmir is limited to the acts done by the President. In Kashmir there was no Rajpramukh or Governor. There was a Monarch in Kashmir and though the Constitution did not provide for the protection of the Rulers, the acts of the Ruler could not be questioned by the laws of the State. At the time of this Order there was in force in Kashmir, the Constitution Act, 1939 and according to its provisions the acts of the Ruler could not be questioned at all. Article 364 which empowers the President to exclude or modify the application of legislation to major ports and aerodromes was to apply to the State only in so far as it related to the laws made by the Parliament. The President had no power to declare a State law inoperative or modify a law made by the State Legislative. Article 365 which empowered the President to suspend the Constitution of a State on failure to comply with a direction given by the Union was not to apply to Kashmir.

Part XX contains only one Article 368, which sets out the procedure for amending the Constitution. In its application to Jammu and Kashmir State, it is subject to a further proviso, viz. :

"Provided further that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by order of the President under Cl. (1) of Art. 370."

This means that apart from the formalities essential under Article 368, for the amendment of the Constitution in its application to Jammu and Kashmir, there was another formality to be observed viz., that of an Order

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by the President of India under 370 (1) is necessary. The President could make an Order under the said Article only in consultation with the Government of Jammu and Kashmir. This meant that the amendment of the Constitution of India could apply to Kashmir only if the State Government (and later the Constituent Assembly of the State) agreed. This was a safeguard ensuring the continuance of relationship of Kashmir with India on the existing basis. Had this safeguard not been placed, the possibility that the State lost its sovereignty was not ruled out especially because of the "strong centralising tendency" in India.

Part XXI deals with temporary and transitional provisions. The provisions of Article 389 permitting Bills pending in the Legislatures of the Dominions, the provinces and the States to continue from the stage reached when the Indian Constitution came into force, were to apply only in so far as they related to the Bills pending in the Dominion Legislature. Article 390 relating to money raised and expenditure incurred between the commencement of the Constitution and 31 March, 1950 only applied in so far as it related to the consolidated Funds of India."

Of the nine schedules in the Constitution of India only five were made applicable to the State. Those were : Schedule I which named and determined Part A, Part B and Part C States and their territories ; Schedule II which prescribed the emoluments of high officials ; Schedule III containing Oaths of offices ; Schedule IV dealing with representation in the Council of States and Schedule VIII prescribing recognised official languages.

The provisions of Part XXII dealing with 'short title' in Article 393 ; the commencement of the Constitution in Article 394 and Article 395 repealing the Indian Independence Act, 1947 and the Government of India Act, 1935, were made applicable to the State.

The parts of the Constitution of India which did not apply to the State included Part III, which deals with the "Fundamental Rights" and is a very important part of the Constitution. Since the residents of Jammu and Kashmir had been recognised as the citizens of India, it might be assumed that they would enjoy the same Fundamental rights as are enjoyed by the other citizens of India. But it was not so. They do not enjoy those rights. They had no guaranteed Fundamental rights. This might suggest that there was no security for life and liberty in the State and that cases infringing the recognised democratic liberties were not liable to avoidance for unConstitutionality. But an academic appraisal of the situation would be misleading, for the question must be considered in the context of the extra-ordinary circumstances prevailing in the State, taking into account the economic, social and political character of the Nationalist Movement in Kashmir. The popular Ministry in

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Kashmir had decided to abolish the Zamindari system and to transfer land to the tiller, without any compensation to the landlords. If the Fundamental right to compensation for expropriation under the Indian Constitution had been made applicable to Kashmir, legislation implementing the policy would have been held void for repugnancy to Article 31 of the Indian Constitution. There were other reasons too which did not make it possible to apply the Fundamental rights to Kashmir, such as the rights of the State subjects of Kashmir under the State Subject Art, 1927 read the Notification of 1932 which forbade outsiders to purchase immovable property in the State and the conditions prevailing after 1947, which made it necessary for the State to have its own preventive detention law. For some time of course there was no such thing as "Fundamental rights" in Kashmir.

Part IV of the Indian Constitution defines and declares the Directive Principles of the State Policy. Though they are binding on the Executive and Legislative, they are not capable of being enforced by the Courts. They are declared to be "Fundamental in the governance of the country," but they cannot "override the provisions in Part III," and where a Fundamental right may be restricted in the general public interest, legislation to implement a Directive Principle is a prima facie restriction in the general public interest. This part of the Indian Constitution was not applied to Kashmir because it was felt that to do so could hamper the work of the members of the Kashmir Constituent Assembly in formulating the Directive Principles for the Constitution of the State. The members of the Constituent Assembly were under an obligation to respect the manifesto of 1944, which had declared that the people of the State were determined to secure to themselves the right to social welfare and to find the suitable means to achieve it. Since the problems of the people of Kashmir which had an invader on its soil, and which had previously suffered much exploitation at the hands of their favoured immigrants and well to do neighbours, were different from those in the rest of India, it would not have been wise to apply the same principles to both. Whatever concerned India as a whole was embodied in the Constitution of India but whatever concerned the State only was left to be considered by the Constituent Assembly of the State. Despite the unique position in Kashmir, in actual fact, progress towards social security in Kashmir was not markedly different from that in the rest of India. Kashmir, at present, is the only State providing for free education from primary grade to the University level, and the State Government has such principles for its governance.

Part XIV of the Constitution of India deals with the services under the Union and the State. By virtue of Article 238, which declares that the

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reference to States in part XIV shall be construed as not including the State of Jammu and Kashmir, this part is not applicable to Kashmir. In the State the services are regulated by the Kashmir Civil Services Regulation, which restricts the employment in the State to the 'Permanent residents' of the State.

Part XVIII deals with Proclamations of Emergency, a proclamation of general emergency (Art. 352), a proclamation suspending the State Constitution (Art. 356) and a proclamation of financial emergency (Art. 360). In the application of Art. 352 to this State, the President of India had no power to issue a proclamation in case of general emergency arising from internal disturbance. But Kashmir was a part of India and the power of State's 'defence' had been transferred to the Union, defence is not restricted to defence against delcared war ; it covers "cases of external aggression short of war" also, and therefore, it was the duty of the Central Government to deal with external aggression. But the President had no power to proclaim an emergency in cases of internal disturbance, for the reason that a part of the territory of the State was under occupation of an enemy with hostile intentions towards the other part of the State also. It was, all the same, expected that if the necessity arose or when the State Government should feel that the Government's functions cannot be carried out due to 'internal disturbance,' it would request the President to issue a proclamation.

Apart from this, the provisions of the Indian Constitution, which enable the President to issue proclamations of emergency on the "failure of Constitutional machinery in the State" empowering the Union to suspend the State Legislature and control the State Executive did not extend to Kashmir. So the Union could at no time suspend the Legislature of the State nor curtail. The powers of the State Executive on the grounds of the "failure of Constitutional machinery". The difficulty of applying such a provision to a State, part of the territory of which was in enemy occupation, is obvious.

However, there was a complete understanding between the State Government and the Government of India that if a situation arose which threatened the national integrity and security, it would request the President to issue such a proclamation also.

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APPENDIX VIII

RESOLUTION ADOPTED BY THE GENERAL COUNCIL OF THE ALL J & K NATIONAL CONFERENCE ON THE 27th OCTOBER, 1950

Resolution

1. This session of the General Council has examined the report submitted by Sir Owen Dixon to the Security Council carefully and as this report suggests novel methods of dealing with the Kashmir issue, which in the opinion of the General Council not only defeat the very objective on which the people of Jammu and Kashmir have placed their faith but by side-tracking the issue violates the Fundamental principles embodied in the Charter of the United Nations, the General Council feels that an occasion has arisen which calls for a Statement of the basic issues involved in the final determination of the future of the Jammu and Kashmir State.

2. The All Jammu and Kashmir National Conference has consistently maintained that in the determination of the future of this State, the only and supreme factor is the sovereign will of the people expressed freely and democratically. To secure recognition of this inalienable right of the people, the National Conference led the people of this State to mighty struggle against forces within and without the State which denied this right in order to perpetuate themselves as enslavers of the people. A decisive stage of this freedom struggle was reached when the people of this State under the leadership of the National Conference demanded liberation from autocracy entrenched against the will of the people as an essential part of foreign imperialism. While we were facing a violent oppression unleashed against us by autocracy, India was partitioned and the question of the affiliation of the Indian States with one or the other Dominion confronted us suddenly. In accordance with the very basic principles of our movement, we proclaimed that as in the case of the determination of the future of autocracy, the question of accession of the State should be decided by the free will of the people.

3. While our stand found universal support and recognition among the leaders and people of India which has also given throughout our freedom struggle, the leaders of the Muslim League in Pakistan in complete denial of our democratic right let loose aggression against us by employing forces of communal frenzy and violence. This was a culmination of the reactionary

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policies of the Muslim League leadership which had throughout our liberation movement opposed the right of the people and given open support to the continued existence of autocracy under which we, along with people in other States, had been groaning for centuries. The people of Kashmir had come in for special attention at their hands as a result of our consistent opposition to the anti-democratic two-nation theory on which the Muslim League leadership had taken its entire stand. They had fully realised that in the event of the people getting an opportunity of exercising their choice freely in regard to their future affiliations, the two-nation theory would be nailed in Kashmir. They, therefore, resorted to a plan of annexing Kashmir by force.

4. The people of Kashmir stood up heroically to resist this challenge to their national honour and existence. The unique spectacle of communal unity and national resistance presented by the people of Kashmir under the leadership of the National Conference at this hour of greatest trial evoked admiration and support from the freedom loving peoples of the world. While the forces of vandalism had taken in their wake the fair meadows and dales of the valley and had left behind a trial of destruction human misery, the people of Kashmir sought the support of the friendly people and Government of India for the preservation of their national integrity which was freely and unstintedly given. This naturally involved the State in entering into a legal association with India without which the Government of India would not have been in a position to send its armies to Kashmir. Constitutionally and legally this act of accession was final and irrevocable but in keeping with their democratic ideals, the Government of India guaranteed to the people to freely exercise the right to accession after the restoration of normal conditions.

5. The unity of purpose and action forged between the people of Kashmir and India in defence of common ideals and the great liberation role played by the Indian Army resulted in halting aggression and clearing greater parts of our country from the presence of the invader. But yet in order to secure international assistance to undo aggression, India, as a peace-loving country and as a loyal member of the United Nations, placed the Kashmir question before the Security Council.

6. Our case before the Security Council was in the main that Pakistan had committed aggression in Kashmir and had violated the principles of the United Nations and that, therefore, the Security Council should take cognizance of this fact and must call upon Pakistan to withdraw from the territory held forcibly and illegally by her and help in restoring the territorial integrity of the State and the sovereignty of its legal Government. The Security Council sent a Commission to conduct an on the spot investigation of the question.

7. After its prolonged endeavours extending over eighteen months, the Commission reported to the Security Council its failure to secure an

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agreed solution with regard to the determination of the future status of the State of Jammu and Kashmir. The main cause of the failure was the Commission's inability to grapple with the factor of aggression and its desire to bring about a settlement of the dispute without adjudging on the basic causes of the dispute. The National Conference had repeatedly warned the Security Council and its Commission that any attempt by by-passing the Fundamental factor of aggression would end in failure.

8. The sending out to the sub-continent of Sir Owen Dixon as the Mediator offered yet another opportunity to the Security Council to find a just and fair solution of the Kashmir question. After laboured and studied efforts to examine the various aspects of this question, the Mediator in his report to the Security Council came to the categorical conclusion that the actions of Pakistan in sending tribesmen and subsequently her armed forces into the territory of Jammu and Kashmir State was an act of aggression in clear violation of the international law.

9. The inescapable consequence of this judicial pronouncement is to proceed with the task of securing the unconditional withdrawal of all forces illegally sent or maintained by Pakistan on the soil of Jammu and Kashmir and consequently undoing the results of this aggression which had brought about unlawful occupation of these areas so that necessary conditions for the free exercise of the will of people for determining their future would be created. These conditions mainly are :

(*i*) restoration of the territorial integrity of the State and extension of the sovereignty of the lawful Government of the State over these areas ;

(*ii*) liquidation of the aggressor-sponsored local authority as well as armed bands raised by the aggressor for hostilities ;

(*iii*) rehabilitation and resettlement of nationals of the State uprooted by aggression in conditions of security and normalcy.

10. Contrary to his own finding that aggression had taken place, the Mediator instead of suggesting that conditions following from aggression be undone, suggested :

(*a*) that the area under the occupation of the aggressor should be secured legally for him ;

(*b*) that the area at present with the lawful Government be further parcelled out arbitrarily into disputed areas ;

(*c*) that the lawful Government should cease to function for a period of six months and should be superceded by alien authority ;

(*d*) that in such a situation forces of the aggressor will be given equal status with the legally constituted authority ;

(*e*) that the legal instrument for the preservation of peace in the State be liquidated.

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11. It will thus be seen that the Dixon report while admitting that armed intervention of Pakistan constitutes a flagrant breach of international law accords recognition to the aggressor firstly as an equally party and then bestows upon him title to possess the fruits of his aggression. Further, what the aggressor has not be able to secure by force, is being offered to him by arbitrarily declaring the rest of the territory as under dispute where conditions are proposed to be imposed as being entirely favourable to the aggressor.

12. In the opinion of the General Council, the observations of the Mediator and the methods recommended by him for bringing about a settlement of the Kashmir question are a clear negation of the right of self-determination of the people of the Jammu and Kashmir State. The dismemberment of the State which is contemplated by the Mediator would render the exercise of such right impossible. The All Jammu and Kashmir National Conference has repeatedly maintained that the territorial integrity of the State must remain inviolate and that in determining their future, the unity and the organic homogeneity of the people should not be broken into artificial compartments. The General Council further believes that he only guarantee of the unity of the people and the country is its legally constituted Government, a position which was accepted in the U.N.C.I.P. resolutions to which even Pakistan Government gave their acceptance. The General Council therefore, feels that the attempts in the Mediator's report to bring into question this internationally recognized guarantee is a direct assault on the Fundamental rights of the people of the Jammu and Kashmir State.

13. This meeting of the General Council of the All Jammu and Kashmir National Conference views with great concern the repeated failure of the U.N. to redress the wrong of aggression of which the people of the State continue to be victims. This failure in its opinion is due to the continued concessions given to Pakistan by placing a premium on her intransigence.

14. The indecision and unrealistic procedure adopted so far has condemned the people of the State to a life of agonizing uncertainty. The All Jammu and Kashmir National Conference is gravely concerned and cannot any longer afford to ignore the perpetuation of these conditions of doubt and frustration. In the opinion of the General Council, therefore, time has come when the initiative must be regained by the people to put an end to this indeterminate State of drift and indecision.

15. The General Council recommends to the Supreme National Executive of the people to take immediate steps for convening a Constituent Assembly based upon adult suffrage and embracing all sections of the people and all the Constituents of the State for the purpose of determining the future shape and affiliations of the State of Jammu and Kashmir. In this sovereign Assembly embodying the supreme will of the people of the State, we shall give ourselves and our children a Constitution worthy of the traditions of our freedom struggle and in accordance with the principles of New Kashmir.

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APPENDIX IX

YUVRAJ KARAN SINGH'S PROCLAMATION OF 1951

Whereas it is the general desire of the people of the State of Jammu and Kashmir that an Assembly should be brought into being for the purpose of framing a Constitution for the State.

Whereas it is commonly felt that the convening of the Assembly can no longer be delayed without detriment to the future well-being of the State.

And whereas the terms of proclamation of the Maharaja dated 5th March, 1948 in regard to the convening of a national Assembly as contained in clauses 4 to 6 of the operative part thereof do not meet the requirements of the present situation.

I, Yuvraj Karan Singh, do hereby direct as follows :

(1) A Constituent Assembly consisting of representatives of the people, elected on the basis of adult franchise, shall be constituted forthwith for the purpose of framing a Constitution for the State of Jammu and Kashmir.

(2) For the purposes of the said election the State shall be divided into a number of territorial Constituencies each containing a population of 40,000 or as near thereto as possible, and each electing one member. A Delimitation Committee shall be set up by the Government to make recommendations as to the number of constituencies and the limit of each Constituency.

(3) Election to the Constituent Assembly shall be on the basis of adult suffrage, that is to say, every person who is a State-subject of any class, as defined in the Notification No. ...., is not less than twenty-one years of age on the First day of March, has been a resident in the Constituency for such period as any be prescribed by the rules, shall be entitled to register in the electoral rolls of the Constituency, provided that any person who is of unsound mind or has been so declared by a competent Court, shall be disqualified for registration.

(4) The vote of election shall be by direct and secret ballot ;

(5) The Constituent Assembly shall have power to act notwithstanding any vacancy in the membership thereof ;

(6) The Constituent Assembly shall frame its own agenda and make rules for the governing of its procedure and the conduct of its business.

The Government shall make such rules and issue such instructions and orders as may be necessary to give effect to the terms of this proclamation.

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APPENDIX X

PLAN SHOWING ALLOTMENT OF 74 SEATS IN CONSTITUENT ASSEMBLY HALL, SRINAGAR IN OCT, 1951

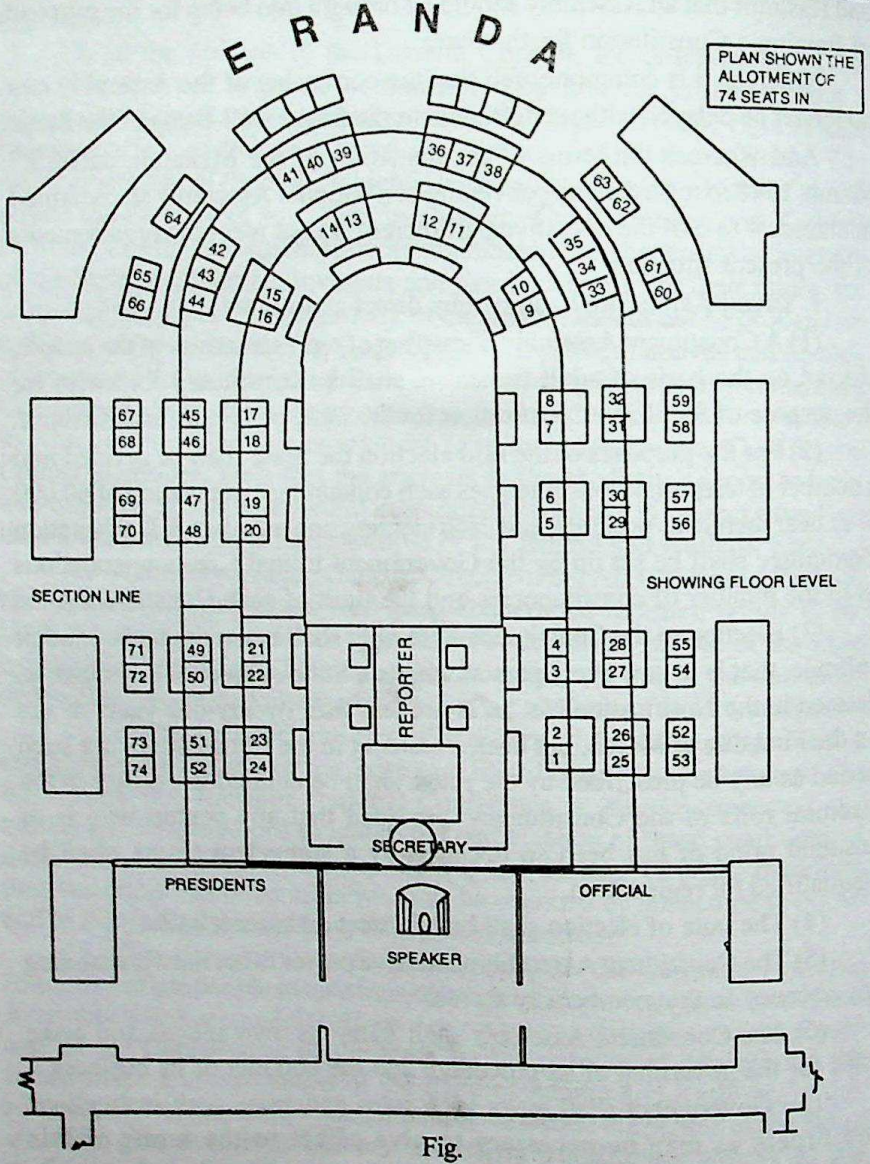

Fig.

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APPENDIX XI

NAMES OF HON'BLE MEMBERS OF JAMMU AND KASHMIR CONSTITUENT ASSEMBLY WHO SIGNED THE REGISTER

S. No.	Name of the Member	Name of the Constituency	Seat No.
1.	Hon'ble Multana Mohd.Saeed Masudi	Amira Kadal	Temporarity Chairman
2.	" Sheikh Mohd. Abdullah	Hazratbal	1
3.	" Bakhshi Ghulam Mohammad	Saffa Kadal	2
4.	" Mirza Mohd. Afzal Beg	Anantnag	3
5.	" Pt. Girdliari Lal Dogra	Jasmergarh	4
6.	" Pt. Sham Lal Saraf	Habba Kadal	5
7.	" Mr. Abdul Aziz Shawl	Rajouri	73
8.	" Khawaja Abdul Gani Trali	Rajpora	8
9.	" Mr. Abdul Gani Goni	Bhalesa-Bhujwal	29
10.	" Syed Abdul Qadus	Biruwa	72
11.	" Bakshi Abdul Rashid	Charar-i-Sharif	30
12.	" Kh. Abdul Kabir Khan	Bandipora-Gurez	14
13.	" Kh. Abdul Khaliq	Saniwara	71
14.	" Syed Allaudin Glani	Handwara	10
15.	" Mr. Assad Ullah Mir	Ramban	23
16.	" Pt. Bhagat Ram	Landar-Tikri	54
17.	" Bhaghat Chhajju Ram	Ranbirsinghpura	70
18.	" Sardar Chela Singh	Chhamb	48
19.	" Shree Chuni Lal Kotwal	Bhadarwah	52
20.	" Mr. Durga Prashad Dhar	Kulgam	26
21.	" Kh. Ghulam Ahmad Mir	Dachinpara	69
22.	" Master Ghulam Ahmad	Haveli	68
23.	" Kh. Ghulam Ahmad Dew	Doda	47
24.	" Pirzada Ghulam Ghilani	Pampore	57
25.	" Kh. Ghulam Hussan Khan	Narwaw	46
26.	" Kh. Ghulam Hussain Bhat	Nandi	66
27.	" Kh. Ghulam Hussan Malik	Devasar	45
28.	" Pir Ghulam Mohd. Masoodi	Tral	65
29.	" Mr. Ghulam Mohd. Sadiq	Tacipora	74

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S. No.	Name of the Member	Name of the Constituency	Seat No.
30.	" Mirza Ghulam Mohd. Beg	Naubug Brang Valley	7
31.	" Kh. Ghulam Mohd. But	Pattan	44
32.	" Kh. Ghulam Mohi-ud-Din Khan	Khansahib	64
33.	" Kh. Ghulam Mohi-ud-Din Hamdani	Khanyar	6
34.	" Mirwaiz Ghulam Nabi Hamdani	Zaddibal	18
35.	" Kh. Ghulam Nabi Wani	Darihgam	63
36.	" Kh. Ghulam Nabi Wani	Lolab	62
37.	" Kh. Ghulam Qadir Bhat	Kangan	42
38.	" Kh. Ghulam Qadir Masala	Drugmulla	41
39.	" Kh. Ghulam Rasool Sheikh	Shopian	61
40.	" Kh. Ghulam Rasool Kar	Hamal	22
41.	" Kh. Ghulam Rasool Kraipak	Kishtwar	58
42.	" Hakim Habibullah Khan	Sopore	51
43.	" Shree Hem Raj	Ramnagar	31
44.	" Sardar Harbans Singh Azad	Baramuula	53
45.	" Syed Ibrahim Shah	Kargil	20
46.	" Shrimati Ishar Devi Maini	Jammu City Northern	11
47.	" Pt. Janki Nath Kakroo	Kothar	38
48.	" Kh. Jamal-ud-Din	Drahal	39
49.	" Maulvi Jamaitali Shah	Mendhar	32
50.	" Shree Kushak Bakula	Leh	19
51.	" Shree Kishen Dev Sethi	Nowshera	15
52.	" Sardar Kulbir Singh	Poonch City	9
53.	" Kh. Mohammad Afzal Khan	Uri	57
54.	" Sheikh Mohd. Akbar	Tangamarg	49
55.	" Kh. Mohd. Anwar Shah	Karnah	36
56.	" Kh. Mohd. Ayub Khan	Arnas	55
57.	" Syed Mohd. Jalali	Badgam	59
58.	" Peer Mohd. Maqbool Shah	Ramhal	60
59.	" Kh. Mir Qasim	Doru Shahabad	25
60.	" Kh. Mubarik Shah	Magam	28
61.	" Shree Mansukh Rai	Reasi	35
62.	" Shree Mahant Ram	Basohli	43
63.	" Pt. Moti Ram	Udhampur	24
64.	" Mahasha Nahar Singh	Bishnah	13
65.	" Kh. Noor Dar	Khowarpora	16

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S. No.	Name of the Member	Name of the Constituency	Seat No.
66.	" Kh. Noor-ud-Din Sufi	Gandarbal	34
67.	" Major Piar Singh	Kathua	27
68.	" Shree Ram Chand Khajuri	Billawar	17
69.	" Lala Ram Piara Saraf	Samba	21
70.	" Shrimati Ram Devi	Jammu City Southern	12
71.	" Shree Ram Rakha Mal	Kahanachak	67
72.	" Wazir Ram Saran	Jandrah Grota	33
73.	" Pandit Ram Lal Akhnoor	50	
74.	" Mr. Sagar Singh	Parmandal	37
75.	" Kh. Sana Ullah Sheikh	Pulwama	40

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APPENDIX XII

SHEIKH MOHEMMAD ABDULLAH'S HISTORIC STATEMENT TO THE CONSTITUENT ASSEMBLY OF J & K ON NOV. 5, 1951

"Mr. President, Today is our day of destiny. A day which comes only once in the life of a nation. A day on which to remember the hosts of those gone before us, and of those yet to come, and we are humbled by the greatness of this day.

After centuries, we have reached the harbour of our freedom, a freedom, which, for the first time in history, will enable the people of Jammu and Kashmir, whose duly elected representatives are gathered here, to shape the future of their country after wise deliberation, and mould their future organs of Government. No person and no power stand between them and the fulfilment of this – their historic task. We are free, at last to shape our aspirations as people and to give substance to the ideals which have brought us together here.

We meet here today, in this palace hall, once the symbol of unquestioned monarchial authority, as free citizens of the New Kashmir for which we have so long struggled.

I see about me in this hall, many companions – Hindus, Muslims, Buddhists, Harijans and Sikhs, who first trod with me that path which has brought us to this Constituent Assembly of 1951. We fought as one, against tyranny and oppression. We survived privations and bitter struggles – the jails of Hari Parbat, Bahu, Badarwah, and those other jails which only imprisoned our bodies but could not crush our spirit.

When we took back on these years, we see how our footsteps have taken us not among the privileged, but into the homes of the poor and downtrodden. We have fought their battle against privilege and oppression and against those darker powers in the background which sought to set man against man on the ground of religion. Our movement grew and thrived side by side with the Indian National Congress and gave strength and inspiration to the people of the Indian States.

I may be forgiven if I feel proud that once again in the history of this State, our people have reached a peak of achievement through what I might call the classical Kashmiri genius for synthesis, born of toleration and mutual respect. Throughout the long tale of our history, the highest pinnacles of

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our achievement have been scaled when religious bigotry and intolerance ceased to cramp us, and we have breathed the wider air of brotherhood and mutual understanding.

Our movement to freedom has been enacted against the background of this same old struggle. We stood for the brotherhood of men of all creeds, and strengthened our union on the basis of common work and sacrifice. Against us were ranged the forces of religious bigotry centred in the Muslim League and its satellites and the Hindu communalists from within and without the State. Ranged against us, and often in alliance with communalism were the forces of the autocratic States, backed up on the one hand by British Imperialism, the Paramount Power, and on the other, by the rich landowners and other beneficiaries of Court patronage.

We must remember that our struggle for power has now reached its successful climax in the convening of this Constituent Assembly. It is for you to translate the vision of NEW KASHMIR into reality, and I would remind you of its opening words, which will inspire our labours :

"We, the people of Jammu, Kashmir, Ladakh and the Frontier reigions, including Poonch and Chenani Illaqas – commonly know as Jammu and Kashmir State – in order to perfect our union in the fullest equality and self-determination, to raise ourselves and our children for ever from the abyss of oppression and poverty, degradation and superstition, from medieval darkness and ignorance, into the sunlit valleys of plenty, ruled by freedom, science and honest toil, in worthy participation of the historic resurgence of the peoples of the East, and the working masses of the world, and in determination to make this our country a dazzling gem on the snowy bosom of Asia, do propose and propound the following Constitution of our State".

This was passed at the 1944 Session of the National Conference in Srinagar. Today, in 1951, embodying such aspirations, men and women from the four corners of the State in this Constituent Assembly have become the repositary of its sovereign authority. This Assembly, invested with the authority of a constituent body, will be the fountain-head of basic laws, laying the foundation of a just social order and safeguarding the democratic rights of all the citizens of the State.

You are the sovereign authority in this State of Jammu and Kashmir ; what you decide has the irrevocable force of law. The basic democratic principle of sovereignty of the nation, embodied ably in the American and French Constitutions, is once again given shape in our midst. I shal quote the famous words of Article 3 of the French Constitution of 1791.

"The source of all sovereignty resides Fundamentally in the nation ... Sovereignty is one and indivisible, inalienable and imprescriptable. It belongs to the nation."

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We should be clear about the responsibilities that this power invests us with. In front of us lie decisions of the highest national importance which we shall be called upon to take. Upon the correctness of our decisions depends not only the happiness of our land and people now, but the fate as well of generations to come.

What then are the main functions that this Assembly will be called upon to perform ?

One great task before this Assembly will be to devise a Constitution for the future governance on the country. Constitution making is a difficult and detailed matter. I shall only refer to some of the broad aspects of the Constitution, which should be the product of the labours of this Assembly.

Another issue of vital import to the nation involves the future of the Royal Dynasty. Your decision will have to be taken both with urgency and wisdom, for on that decision rests the future form and character of the State.

The third major issue awaiting your deliberations arises out of the Land Reforms which the Government carried out with vigour and determination. Our "land to the tiller" policy brought light into the dark homes of the peasantry ; but, side by side, it has given rise to the problem of the landowners' demand for compensation. The nation being the ultimate custodian of all wealth and resources, the representatives of the nation are truly the best jury for giving a just and final verdict on such claims. So in your hands lies the power of this decision.

Finally, this Assembly will after full consideration of the three alternatives that I shall State later, declare its reasoned conclusion regarding accession. This will help us to canalise our energies resolutely and with greater zeal in directions in which we have already started moving for the social and economic advancement of our country.

To take our first task, that of Constitution-making, we shall naturally be guided by the highest principles of the democratic Constitution of the world. We shall base our work on the principles of equality, liberty and social justice which are an integral feature of all progressive Constitutions. The rule of law as understood in the democratic countries of the world should be the cornerstone of our political structure. Equality before the law and the independence of the Judiciary from the influence of the Executive are vital to us. The freedom of the individual in the matter of speech, movement and association should be guaranteed ; freedom of the Press and of opinion would also be features of our Constitution. I need not refer in great detail to all those rights and obligations, already embodied in NEW KASHMIR, which are integral parts of democracy which has been defined as "an apparatus of social organisation wherein people govern through their chosen representatives and are themselves guaranteed political and civil liberties."

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You are no doubt aware of the scope of our present Constitutional ties with India. We are proud to have our bonds with India, the goodwill of whose people and Government is available to us in unstinted and abundant measure ... . The Constitution of India has provided for a federal union and in the distribution of sovereign powers has treated us differently from other Constitution units. With the exception of the items grouped under Defence, Foreign Affairs and Communication in the Instrument of Accession, we have complete freedom to frame our Constitution in the manner we like. In order to live and prosper as good partners in a common endeavour for the advancement of our peoples, I would advise that, while safeguarding our autonomy to the fullest extent so as to enable us to have the liberty to build our country according to the best traditions and genius of our people, we may also by suitable Constitutional arrangements with the Union establish our right to seek and compel Federal co-operation and assistance in this great task, as well as offer our fullest co-operation and assistance to the Union.

Whereas it would be easy for you to devise a document calculated to create a framework of law and order, as also a survey of the duties and rights of citizens, it will need more arduous labour to take concrete decisions with regard to the manner in which we propose to bring about the rapid economic development of the State and more equitable distribution of our national income among the people to which we are pledged. Our National Conference avows its faith in the principle that there is one thing common to men of all castes and creeds, and that is their humanity. That being so, the one ailment which is ruthlessly sapping the vitality of human beings in Jammu and Kashmir is their appealing poverty, and if, we merely safeguard their political freedom in solemn terms, it will not affect their lives materially unless it guarantees them economic and social justice.

NEW KASHMIR contains a Statement of the objectives of our social policy. It gives broadly a picture of the kind of life that we hope to make possible for the people of Jammu and Kashmir and the manner in which the economic organisation of the country will be geared to that purpose. These ideals you will have to integrate with the political structure which you will devise.

The future political set-up which you decide upon the Jammu and Kashmir must also take into consideration the existence of various sub-national groups in our State. Although culturally diverse, history has forged an uncommon unity between them ; they all are pulsating with the same hopes and aspirations, sharing in each others' joys and sorrows. While guaranteeing this basic unity of the State, our Constitution must not permit

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the concentration of power and privilege in the hands of any particular group or territorial region. It must afford the fullest possibilities to each of these groups to grow and flourish in conformity with their cultural characteristics, without detriment to the integral unity of the State or the requirements of our social and economic policies.

Now let us take up an issue of basic importance which involves the Fundamental character of the State itself. As an instrument of the will of a self-determining people who have now become sovereign in their own right, the Constituent Assembly will now re-examine and decide upon the future of the present ruling dynasty, in respect of its authority.

The present House of the Rulers of our State based its claim to authority on the Treaty Rights granted to it by the British Government in 1846. To throw light on the nature of these rights, it will be helpful to recall that the British power, in its drive for territorial expansion, achieved its objectives through a network of alliances with the Indian Princess, subsidiary and subordinate, offensive and defensive. This mutually helpful arrangement enabled the British to consolidate their power, and strengthened the grip of the Princess, giving them military help in the even of rebellion by their exploited subjects. The Butler Committee Report on Treaty Rights in 1929 bears ample testimony to this. It says :

"The duty of the Paramount Power to protect the States against rebellion and insurrection is derived from the clauses of treaties and sanads, from usage and from the promise of the King Emperor to maintain unimpaired the privileges, rights and dignities of the Princes ... The promise of the King Emperor to maintain unimpaired the privileges, rights and dignities of the Princes carries with it is duty to protects the Prince against attempts to eliminate him and substitute another form of Government."

In recognition of their services to the British Crown, the Indian Princes earned the rewards of a limited sovereignty over their States under the protection and suzerainty of the Paramount Power. It was in this way that their rights, privileges and prerogatives were preserved.

Thus the pioneers of British Imperialism subjugated India, aided by the Indian Princes. This was hardly diplomacy ; it amounted to fraud and deceit. Mutual agreements arrived at for such ignoble purposes were invested with the sanctity of treaties. And it is from such "treaties" that the Princes claimed their right to rule. Our own State provides a classic example of this. One glance at a page of our history will lay bare the truth.

The State of Jammu and Kashmir came to be transferred to Maharaja Gulab Singh in 1846, after the Sikh Empire began to disintegrate. His failure to render competent assistance to the Sikh armies was duly notices by the

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British as also his willingness to acknowledge their authority. This paved the way for the total occupation of Northern India by the British who were not slow in recognising Maharaja Gulab Singh's services to them. In reward they sold him the territory of Jammu and Kashmir for 75 lakhs of rupees, and, in the Treaty of Amritsar, the British Government made over the entire country in independent possession to "Maharaja Gulab Singh and the heirs male of his body." In this way, the entire population of Jammu and Kashmir State came under his absolute authority. The peculiar indignity of the transaction naturally offended the national self-respect of our people, who resisted the occupation of their country. But the direct intervention of the British troops helped the Maharaja to take possession of the territory.

This event in the history of the State had catastrophic consequences for the people. The old feudal order, which was bad enough, gave way to more exacting rule, in which the Maharaja assumed all proprietary rights over land. The entire State was plunged into a chaotic economic condition, aggravated by a heavy scale of taxation, tributes and levies which were required to make up for the money given by the Maharaja to the British. This unrelieved despotism reduced the bulk of the people to the level of serfs. There was general impoverishment. In 1848, some 4,000 artisans started on a trek to Lahore, with the object of permanently settling there. Even the British counselled the Maharaja to loosen his grip so as to avoid a total collapse of his administration. Perhaps the forefathers of the great poet-philosopher son of Kashmir, Iqbal, were also part of the same trail of migrants who left the State at this time. When his agony over the fate of the people of his homeland burst out in immortal verse, his feelings are echoed in the heart of every Kashmiri :

"O Wind, if you pass through Geneva, give this message to the comity of the people of the world. They sold the peasant, his field, his property and the roof over his head, in fact, they sold the entire nation and for what a paltry price !"

Invested with this absolute authority acquired in 1846, the present ruling dynasty was in power for one hundred years. This sad and stern century of servitude has stultified the growth of our people, leaving them in the backwaters of civilisation. While in British India, and even in some of the Indian States, many a measure of reform was introduced to alleviate the misery of the people, in this State the unenlightened absolutism of the Rulers drove them deeper and deeper into poverty and degradation. When conditions became increasingly intolerable, they made determined efforts to wrest power from the hands of the Ruler.

By 1947, India had achieved independence and reached one of her historical watersheds. It was clear that with the withdrawl of the Paramount

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Power, the treaty rights of the Indian Princes would cease. Sovereignty in that case should revert to the people ; they wished therefore to be consulted about the arrangements to be made with regard to the transfer of power. But a strange situation arose. The Cabinet Mission, while admitting the claims of the Indian National Congress and the Muslim League in British India, completely refused a similar representation of the Stages' peoples, who would not allow the right of the Princes to speak on their behalf.

In our own State, the National Conference had made it clear as early as February 10, 1946 that it was against any further continuance of the treaty rights of the Princes which had been "made in times and under circumstances which do not obtain now and which have been framed without seeking the consent of the State peoples. Under such circumstances, no treaties or engagements which act as a dividing wall between their progress and that of their brethren in British India, can be binding on the people."

It was in this connection that I invited the attention of the Cabinet Mission to the standing iniquity of the Treaty of Amritsar, and sought its termination. I wrote to the Cabinet Delegation that :

"as the Mission is at the moment reviewing the relationship of the Princes with the Paramount Power with reference to treaty rights, we wish to submit that for us in Kashmir re-examination of this relationship is a vital matter because a hundred years ago in 1846 the land and people of Kashmir were sold away by the British for 50 lakhs of British Indian Rupees. The people of Kashmir are determined to mould their destiny and we appeal to the Mission to recognize the justice and strength of our cause."

In the Memorandum submitted to the Cabinet Mission later by the National Conference, the demand for independence from autocracy was reiterated : " Today the national demand of the people of Kashmir is not merely the establishment of responsible Government. But their right to absolute freedom from autocratic rule. The immensity of the wrong done to our people by the sale deed of 1846 can only be Judged by looking into the actual living conditions of the people. It is the depth of our torment that has given strength to our protest."

The indifferent attitude of the Cabinet Mission to the claims of the State's people convinced us that freedom would not be given to a hundred million people who were to be left to groan under the heel of autocratic rulers. Consequently the National Conference gave a call to the people to prepare themselves for fresh ordeals and new responsibilities in the final bid for the capture of power from the hands of autocracy. This call came

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on the eve of the transfer of power in India and was therefore in keeping with the spirit of the times.

The partition of India in 1947 brought many new problems and developments in its wake. In Kashmir, the very foundations of the administration began to shake, and the Government made frantic efforts to patch up the cracking structure. Its incompetence had become glaring. With the tribal raids on the State in October 1947, it was obvious that the Maharajah's authority had ceased to function and the real power lay in the hands of the people's organisation, the National Conference. Even at this hour to grave national danger, the Ruler failed to see the wisdom of taking this organisation into his confidence and he preferred escape to the dignity of a formal surrender. When the situation became critical, the unprecedented pressure of the people forced him to call upon the representatives of the National Conference to deal with the emergency, when he himself had failed to handle the affairs of the State effectively.

The Emergency Administration in the State marked in effect a revolutionary transfer of power from the Ruler to the people.

It was however the Proclamation of March 5, 1948 which constituted the first step towards the completion of national emancipation. On this day, I, as leader of the largest party of the State, was entrusted with its Government. Being assigned by a Cabinet with full powers to run the administration. The Maharajah's authority was limited to that of a Constitutional ruler, making it imperative upon him to consult his Government on all issues relating to the governance of the State.

This was obviously an interim measure. The Cabinet of the people's representatives thus chosen functioned with the support and co-operation of the National Conference, but with the passage of time it became clear that the Maharajah could not reconcile himself to this democratic system of Government. He put positive impediments in the way of the Government. These threatened to block much-needed reforms in various spheres of administration. It was, therefore, natural that following disagreement between him and the Government on matters of policy, that he should disconnect himself from the administration and leave the State. His young son Yuvraj Karan Singh thereupon became the Regent and has functioned since as Constitutional Head of the State.

Today, the Constituent Assembly having met, the time has come for the people's representatives to make the Fundamental decision about the future position of the present dynasty.

It is clear that this dynasty can no longer exercise authority on the basis of an old discredited Treaty. During my trial for sedition in the "Quit Kashmir" movement, I had clarified the attitude of my party when I said :

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"The future Constitutional set-up in the State of Jammu and Kashmir cannot derive authority from the old source of relationship which was expiring and was bound to end soon. The set-up could only rest on the active will of the people of the State, conferring on the Head of the State the title and authority drawn from the true and abiding source of sovereignty, that is the people."

On this occasion, in 1946, I had also indicated the basis on which an individual could be entrusted by the people with the symbolic authority of a Constitutional Head :

"The State and its Head represent the Constitutional circumference and the centre of this sovereignty respectively, the Head of the State being the symbol of the authority with which the people may invest him for the realization of their aspirations and the maintenance of their rights."

In consonance with these principles, and in supreme fulfilment of the people's aspirations, it follows that a Constitutional Head of the State will have to be chosen to exercise the functions which this Assembly may choose to entrust to him.

So far as my Party is concerned, we are convinced that the institution of monarchy is incompatible with the spirit and needs of modern times which demand on egalitarian relationships between one citizen and another. The supreme test of a democracy is the measure of equality of opportunity that it affords to its citizens to rise to the highest point of authority and position. In consequence, monarchies are fast disappearing from the world picture, as something in the nature of feudal anachronism. In India, too, where before the partition, six hundred and odd Princes exercised rights and privileges of rulership, the process of democratisation has been taken up and at present hardly ten of the exercise the limited authority of Constitutional heads of States.

After the attainment of complete power by the people, it would have been an appropriate gesture of goodwill to recognize Maharajah Hari Singh as the first Constitutional Head of the State. But I must say with regard that he has completely forfeited the confidence of every section of the people. His incapacity to adjust himself to changed conditions and his antiquated views on vital problems constitute positive disqualifications for him to hold the high office of a democratic. Head of the State, Moreover, his past actions as a ruler have proved that he is not capable of conducting himself with dignity, responsibility and impartiality. The people still remember with pain and regret his failure to stand by them in times of crisis, and his incapacity to afford protection to a section of his people in Jammu.

Saint Thomas Aquinas, as early as the thirteenth century, described the consequences of a king refusing to realise his responsibilities in these wise words :

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"A king who is unfaithful to his duty forfeits the claim to obedience. It is not rebellion to depose him, for he is himself a rebel whom the nation has a right to put down. But it is better to abridge his power that he may be unable to abuse it ..... . All political authority is derived from the people, and all laws ought to be made by them or their own representatives. There is no security for us so long as we depend upon the will of another man."

Because of his background, it would therefore, be impossible to think of his being associated again with the administration of the State.

I am sure none of us is interested in a personal controversy with the Maharajah's family. In the conduct of public affairs, it is necessary that an impartial view of every individual's deeds should be taken. Our judgment should not be warped by ill-will or personal rancour. During our association with Yuvraj Karan Singh these last few years, I and my colleagues in the Government have been impressed by his intelligence, his broad outlook and his keen desire to serve the country. These qualities of the Yuvraj single him out as a fit choice for the honour of being chosen the first Head of the State.

There is no doubt that Yuvraj Karan Singh in his capacity as a citizen of the State, will prove a fitting symbol of the transition to a democratic system in which the ruler of yesterday becomes the first servant of the people, functioning under their authority, and on their behalf.

The next issue before us is that of the compensation which we should or should not grant to those landowners who have been expropriated during the putting into operation of the "land to the tiller" legislation, under which land was given, or given back, to the man who actually cultivates it.

It is not possible for you to consider this question dispassionately unless you understand something of the history of land tenure in the State. For us the well-being of the peasants who form the vast majority of the population of this country is a top priority ; we realize that on a sound organisation of agriculture, and the elimination of debt and the evils of landlordism their ultimate welfare depends. We sincerely believe that our body politic cannot be healthy as long as there exists here an army of men doing little or no work and getting easy remuneration for it, and as long as we perpetuate the dangerous age-old class division of our society that landlordism breeds. Our attempt has been to make our land dwellers contented. We set about this Fundamental reform in the following way

On Martyrs' Day, the 13th of July, 1950, the Government declared its policy of liquidating the big landed eStates and transferring land to the tillers of the soil. On the 17th of October, 1950 was enacted the Big Landed EStates Abolition Act. By this Act, the right of ownership in respect of

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lands in excess of 22 ¾ acres of land excluding orchards, grass and fodder farms and fuel reserves, was abolished and such land was decreed to be transferred to the actual tillers to the extent of their possession. In this way, the right of the cultivator to the ownership of land in his possession was recognised and enforced and no new class of intermediaries or rent-receivers was allowed to come into being. The abolition of landlordism is thus an accomplished fact and there is no going back on the decision already taken. The Big Landed EStates Abolition Act, however, provides for the Constituent Assembly to settle the question of compensation with respect to the land from which expropriation has taken place. That question is now before you decision.

The system of individual ownership of land is of modern growth and originally, the land belonged in common to communities of kinsmen or to the State. Before the British rule, the proprietors were by no means the real owners of the soil and of all methods for the collection of revenue during that time, the most noteworthy was that of collecting it direct from the cultivators through the Headmen of the villages. There is very little evidence to show that, in Moghul and Sikh times, there were many rent-paying tenants. The Ain-I-Akbari not only contains no regulations about tenants, but also recognises no intermediary between the cultivator and the State. Nevertheless, there were some types of intermediaries in the pre-British period and also in later times, and it is the existence of these intermediaries which led to the development of landlordism in the State. The revenue farmers were one class of such intermediaries and so were the different privileged classes of assignees, jagirdars, muafidars and mukarraridars, all enjoying feudal concessions, which were created during the Moghul and the Sikh times and also during the Dogra Rule.

In the Jammu Province, ownership of land was granted by State Deeds during the Sikh Rule and the earlier period of the Dogra Rule. In the Kashmir Province, the ownership of land was held by the Ruler since 1846, when Maharajah Gulab Singh purchased Kashmir from the British. It was in 1933 as a result of the pressure of public opinion that proprietary right in land was conferred on the landholders in the Kashmir Province including the Frontier Districts, but this concession to mass demand for transfer of proprietorship of land to the actual cultivators was reduced to a fiction in as much as large tracts of land granted by earlier Rulers to influential persons, Rajas and Dewans, by State Deeds were construed and acted upon as grants of the right of proprietorship in land. In this manner were created big proprietors who did not cultivate their lands themselves, but had tenants who paid them rent in cash and kind. The small peasant-proprietor who cultivated land with his own hands also existed, but there were cases

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where the cultivators who had originally acquired Holder's right and were recorded as such were relegated to the position of tenants by the right of land holding being granted by the Ruler to some of his favourites who did not cultivate the land themselves and were pure and simple rent-receivers.

While the land settlement in the State was rightly made with the peasant-proprietors, the settlement with the intermediary proprietors was not made on their recognition as proprietors of the soil, but because of certain political and financial reasons. It was well understood, even by the successive Settlement Officers and Settlement Commissioners in the State that though the intermediary proprietors were to be declared the proprietors of the soil, their tenants really were no ordinary tenants, but were, in most cases, the original and hereditary possessors of the soil. The First Regular Settlement conducted in the State had perhaps nothing to do with the determination of the historical and accurate theory of the intermediary proprietors' position, nor was its function to confer on the proprietors a position comparable to what they originally were. It appears that the task of the settlement authorities was only to legalize all the original acts of illegality and usurpation by which intermediary revenue farmers or rent-receivers had assumed great power and influence in the period of disorder, before a proper Revenue administration came to the country.

At the First Regular Settlement the area of land not under cultivation was very large. In 1891 A.D. when the late Sir Walter Lawrence was in the State, every inducement was given to the cultivators to till the land and in this way large tracts of State land were brought under cultivation. But even such lands as had been reclaimed and brought under the plough by the cultivators were gifted away in proprietary right to influential persons. There were grants of land known as Chaks made under order No. 5 and 6, otherwise known as the Pratap Code. All these grants were subject to substantial concession in land revenue. There were grants of different kinds, as for instance, State Officials' Grant, Grants in Perpetuity, Hindu Grants and others. The vast majority of these concessionist landholders obtained their grants by virtue of the high positions they had acquired. The grants under the Pratap Code were entirely made to the clan and the kinsmen of the Royal House in whose favour were also released some State Forest Reserves and culturable areas in some Game Reserves. With the demarcation of forests in the State, several areas were excluded from the forests and let out for cultivation and for purposes of agriculture. State lands were similarly permitted to be used as Grazing Ground. The reclaimed land out of the Wular Lake, and in and around the Dal Lake, which was owned by the State, was also released for cultivation. And then under Raj Tilak Boon No.

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4 about 26 years ago, State waste lands were granted as Village Commons equivalent to the aggregate cultivated land of each village, with the same rights as the landholders enjoyed in respect of their existing holdings. Even after the First Regular Settlement, many eStates were sold to speculators or given over to those who were prepared to meet the land revenue demand in cases where default was made by actual cultivators, and the right to own land was recognized as that of the revenue-payer as against the actual cultivator who defaulted. The non-cultivating land-owners leased out their interests and the middle-men leased it out in turn, creating a long chain of rent-receivers and rent-payers, who intervened between the State and the actual cultivators.

It will thus be seen that a substantial portion of the landed property came to be owned from such land as was the property of the State before and in every case the acquisition of land was free from any encumbrance or payment of any consideration. It is in the light of this historical background, therefore, that the Hon'ble Members of this House shall have to consider whether there is any justification for payment of any compensation to such land-owners for lands from which they are expropriated under the Big Landed EStates Abolition Act.

Finally we come to the issue which has made Kashmir an object of world interest, and has brought her before the forum of the United Nations. This simple issue has become so involved that people have begun to ask themselves, after three and a half years of tense expectancy, "Is there any solution ?" Our answer is in the affirmative. Everything hinges round the genuineness of the will to find a solution. If we face the issue straight, the solution is simple.

The problem may be posed in this way. Firstly, was Pakistan's action in invading Kashmir in 1947 morally and legally correct, Judged by any norm of international behaviour ? Sir Owen Dixon's verdict on this issue is perfectly plain. In unambiguous terms he declared Pakistan an aggressor. Secondly, was the Maharajah's accession to India legally valid or not ? The legality of the accession has not been seriously questioned by any responsible or independent person or authority.

These two answers are obviously correct. Then where is the justification of treating India and Pakistan at par in matters pertaining to Kashmir ? In fact, the force of logic dictates the conclusion that the aggressor should withdraw his armed forces, and the United Nations should see that Pakistan gets our of the State.

In that event, India herself, anxious to give the people of the State a chance to express their will freely, would willingly co-operate with any sound plan of demilitarization. They would withdraw their forces, only

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garrisoning enough posts to ensure against any repetition of that earlier treacherous attack from Pakistan.

These two steps would have gone a long way to bring about a new atmosphere in the State. The rehabilitation of displaced people, and the restoration of stable civic conditions would have allowed people to express their will and take the ultimate decision.

We as a Government are keen to let our people decide the future of our land in accordance with their own wishes. If these three preliminary processes were accomplished, we should be happy to have the assistance of international observers to ensure fair play and the requisite conditions for a free choice by the people.

Instead invader and defender have been put on the same plane. Under various garbs, attempts have been made to sidetrack the main issues. Sometimes, against all our ideals of life and way of living, attempts to divide our territories have been made in the form of separation of our State religion-wise, with ultimate plans of further disrupting its territorial integrity. Once an offer was made to polie our country with common-wealth forces, which threatens to bring an Imperial control by the back door. Besides the repugnance which our people have, however, to the idea of inviting foreign troops on their soil, the very presence of Common wealth troops could have created suspicions among our neighbours that we were allowing ourselves to be used as a base of possible future aggression against them. This could easily have made us into a second Korea

We have watched all this patiently ; but we cannot be indifferent to the growing sufferings of our people, we cannot any binger tolerate being bandied about and left with an indefinite future. Not only has our patience been tried to its limits, but our self-respect has been challenged by allegations that we are the "stooges of India", and nobodies in our own land, that our influence rests on Indian bayonets that we are running a Police State ; and various other taunts and fantastic allegations.

We, therefore, thought it best to call upon our own people to declare what future they seek. At last we, in October 1950, decided to convoke a Constituent Assembly which would pronounce upon the future affiliations of our State. We were, and are, convinced that whatever some groups or individuals in the would out-side might have to say about this decision of ours, there are in every country many people who have faith in justice and straight forward dealing.

I have no doubt that our considered views will be understood and supported by freedom-living, peace-loving and democratic minded people all over the world. I am sure too that Almighty God who guards all just

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causes will bestow His blessings upon us and guide our footsteps towards correct and honest ends.

The problem, then, of accession has to be considered against the background of history in particular, of the immediate past consequent on the British quitting India and disappearance of the Paramount Power, 1. The end of the War brought to a head the question of Indian freedom. Let me recapitulate. The Cabinet Mission was sent to India to hammer out plans for the transfer of power. This Mission had a series of consultations with parties and leaders of opinion in British India, but refused to agree to the people of the Indian States being represented by their popular leaders and instead backed up their old allies, the Indian Princes. I and my colleagues had at that time raised our voice against this attitude in the following words of our Memorandum :

"The fate of the Kashmiri nation is in the balance and in this hour of decision we demand our basic democratic right to send our selected representatives to the Constitution-making bodies that will construct the framework of Free India. We emphatically repudiate the right of the Princely Order to represent the people of the Indian States or their right to nominate their personal representatives as our spokesmen."

I have no doubt in my mind that if popular representatives from the Indian States had been included in the discussions they would have certainly helped in having many controversial issues resolved fairly and smoothly. But that was not to be. To our misfortune, and to the misfortune of millions of people in India and Pakistan, the Cabinet Mission as well as the Indian political parties seemed to have been swayed by various conflicting considerations with the result that the Indian sub-continent, which had acquired an organic unity through ages of social, cultural and economic intercourse, was suddenly vivisected into the two Dominions of India and Pakistan. I need not relate here the horrors that followed this unnatural operation. Millions of hearts in both countries still ache with wounds that will not heal.

The agony of this changeover became all the more intense at a result of the position in which the Indian States were left. Under the Indian Independence Act of the British Parliament, the Paramountcy of the British Crown, against which the Princes had been leaning, lapsed, and it was made clear that it would not be transferred to either of the succeeding Dominions. There were three alternative courses open to them. They could accede to either of the two Dominions or remain independent. This gave the Princes themselves the option to decide the fate of their States.

Following the announcement of the "Mountbatten Plan" on June 3, some of the Indian States acceded to Pakistan and some of India by means of Instruments of Accession excuted through their Princes. There were

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also some who entered into Standstill Agreements with either or both pending finalization of their decisions.

The betrayal of the interests of the States' people had been expected following the rejection of the Memorandum of the National Conference, and so we in Kashmir decided to place the issue before the people themselves.

This is how our well-known "Quit Kashmir" agitation began. The National Conference once gain led the people through a great struggle, and once again the Ruler tried to curb it, this time with unprecedented severity. But when a whole people is on the move it is not possible to repress them and they do not stop until they wrest freedom and justice for themselves from the unwilling hands of those above them.

The crucial date of Indian and Pakistani Independence, therefore, came when I and my colleagues were still behind prison bars. The whole sub-continent was in a State of high tension and disturbance. If, at that time, the Head of the State of Jammu and Kashmir had even the slightest sense of realism or a proper awareness of the danger lurking in the situation, he would have immediately taken the people into his confidence. By associating their representatives with administration, I am sure many of the complications that arose lalter could have been avoided.

Instead of that, the Maharajah's Government entered into a Standstill Agreement with Pakistan, and this was accepted without question by that Dominion. A similar arrangement was suggested to India, also, but it is noteworthy that the Government of India insisted that it could not consider any agreement entered into by the Government of the State valid until it had the approval of the people's representatives.

While the Indian leaders consistently refused to recognise the right of the Maharajah to decide the vital issue of accession without first securing the approval of his people, the Muslim League and the Pakistan Government supported the claims of the Rulers to speak for their States. The late Mr. Jinnah took the position that after the lapse of Paramountcy, the Princes were completely independent and that they could themselves determine what relations they should have with the two Dominions. Throughout the struggles that the people of Kashmir waged against autocracy, we should never forget that the Muslim League leadership had completely disassociated itself from them, and that, during the upsurge of 1946, their local party organs had assisted the administration to suppress the movement.

At this crucial time, then, Pakistan was under strict cover of secrecy, perfecting her own plans, and the 'Dawn', the Muslim League official organ in Karachi, was appealing to the Maharajah to accede to Pakistan on the grounds that he would have far greater freedom there than in India.

It was at this stage, taking advantage of the isolation of the Kashmiris from the rest of the world, the Pakistan imposed an economic blockade upon us with a view to starving us into submission. Attempts were made

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even to excite communal hatred to disrupt our peaceful civic life. Even in the face of such provocation, the National Conference, I am proud to say, took an objective and democratic stand. Immediately on my release from imprisonment, I clarified the issue at a mass meeting in Srinagar. The first and Fundamental issue before us was the establishment of a popular Government. Our objective might be summarised as "Freedom First". Then alone could we as a free people decide our future associations through accession. I also made it clear that the National Conference would consider this issue without prejudice to its political friends and opponents, and strictly in accordance with the best interests of the country as a whole. I said that, in the State of tension and conflict that obtained both in India and Pakistan, it was difficult for the people here and now to predict what the final shape of both would be.

You will realise, therefore, that we could not be accused of being partial to one side or the other. During that period we openly discussed the matter with representatives of the Muslim League who led come to Srinagar for this purpose. We even sent one of our representatives to Lahore to acquaint the authorities in Pakistan with our point of view. We were thus still struggling against autocracy and for freedom when the State was suddenly invaded from the side of Pakistan.

The overwhelming pressure of this invasion brought about a total collapse of the armed forces of the State as well as its administrative machinery, leaving the completely defenceless people at the mercy of the invaders. It was not an ordinary type of invasion, in as much as no canons of warfare were observed. The tribesmen who attacked the State in thousands, killed, burned, looted and destroyed whatever came their way and in this savagery no section of the people could escape. Even the nuns and nurses of a Catholic Mission were either killed or brutally maltreated. As these raiders advanced towards Srinagar, the last vestige of authority, which lay in the person of the Maharajah, suddenly disappeared from the Capital. This created a strange vacuum, and would have certainly led to the occupation of the whole State by Pakistani troops and tribesmen, if, at this supreme hour of crisis, the entire people of Kashmir had not risen like a solid barrier against the aggressor. They halted his onrush, bur could not stop him entirely as the defenders had not enough experience, training and equipment to fight back effectively. There is no doubt that some of them rose to great heights of heroism during these fateful days. Who can help being moved by the saga of crucified Sherwani, Abdul Aziz, Brigadier Rajendra Singh, Prempal, Sardar Rangil Singh, early Militia boys like Pushkar Nath Zadoo, Somnath Bira, Ismail, among scores of other named and unnamed heroes of all communities. But we, though rich in human material, lacked war equipment and trained soldiers.

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When the raiders were fast approaching Srinagar, we could think of only one way to save the State from total annihilation – by asking for help from a friendly neighbour. The representatives of the National Conference, therefore, flew to Delhi to seek help from the Government of India. But the absence of any Constitutional ties between our State and India made it impossible for her to render us any effective assistance in meeting the aggressor. As said earlier, India had refused to sign a Standstill Agreement with the State on the ground that she could not accept such an Agreement until it had the approval of the people. But now, since the people's representatives themselves sought an alliance, the Government of India showed readiness to accept it. Legally the instrument of Accession had to be signed by the Ruler of the State. This the Maharajah did. While accepting that accession, the Government of India said that she wished that "as soon as law and order have been restored in Kashmir and her soil cleared of the invader, the question of the State's accession should be settled by reference to the people".

Actuated by a sincere desire to avoid bloodshed and further conflict, the Government of India approached the Security Council in 1948, with a plaint angst Pakistan. The request was simple. The contension of India was that Pakistan was responsible for the invasion of Kashmir and was continuing to help the raiders who had been employed as mercenaries for this purpose. And it was further said that legally bound as India was to clear the Jammu and Kashmir State of raiders, she might be constrained to pursue the invaders to their bases in Pakistan, which might lead to a still bigger conflagration. India, therefore, wanted the Security Council to dispose of the case as quickly as possible in the interest of peace. If this had been done, conditions would have ipso facto come into being when the people of Jammu and Kashmir would have expressed their will with regard to the continuance of the accession to the Dominion they had joined. This was not to be.

This is the essential background which we must fully take into account. Now I shall indicate some of the considerations which should be kept in view when you, the Hon'ble Members of this August Assembly, shoulder the grave responsibility of giving your considered opinion on this issue of accession which effects not only the present generation of our people but generations yet to come.

The Cabinet Mission Plan has provided for three courses which may be followed by the Indian States when determining their future affiliations. A State can either accede to India or accede to Pakistan, but, failing to do either, it still can claim the right to remain independent. These three alternatives are naturally open to our State. While the intention of the British Government was to secure the privileges of the Princes ; the representatives of the people must have the primary consideration in mind, consideration of promoting the greatest

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good of the common people. Wherever steps they take must contribute to the growth of a democratic social order wherein all invidious distinctions between groups and creeds are absent. Judged by this supreme consideration, what are the advantages and disadvantages of our State's accession to either India or Pakistan, or of having an independent status ?

As a realist I am conscious that nothing is all black or all white and there are many facts to each of the propositions before us. I shall first speak on the merits and demerits of the State's accession to India. In the final analysis, as I understand it, it is the kinship of ideals which determines the strength of ties between two States. The Indian National Congress has consistently supported the cause of the State's peoples' freedom. The autocratic rule of the Princes has been done away with and representative Governments have been entrusted with the administration. Steps towards democratisation have been taken and these have raised the people's standard of living, brought about much-needed social reconstruction, and, above all built up their very independence of spirit. Naturally, if we accede to India there is no danger of a revival of feudalism and autocracy. Moreover, during the last four years, the Government of India has never tried to interfere in our internal autonomy. This experience has strengthened our confidence in them as a democratic Stage.

The real character of a State is revealed in its Constitution. The Indian Constitution has set before the country the goal of secular democracy based upon justice, freedom and equality for all without distinction. This is the bedrock of modern democracy. This should meet the argument that the Muslims of Kashmir cannot have security in India, where the large majority of the population are Hindus. Any unnatural cleavage between religious groups is the legacy of imperialism, and no modern State can afford to encourage artificial divisions if it is to achieve progress and prosperity. The Indian Constitution amply and finally repudiated the concept of a religious State, which is a throwback to medievalism, by guaranteeing the equality of rights of all citizens irrespective of their religion, colour, caste and class.

The national movement in our State naturally gravitates towards these principles of secular democracy. The people here will never accept a principle which seeks to favour the interests of one religion or social group against another. This affinity in political principles, as well as in past association, and our common path of suffering in the cause of freedom, must be weighed properly while deciding the future of the State.

We are also intimately concerned with the economic well-being of the people of this State. As I said before while referring to Constitution-building, political ideals are often meaningless unless linked with economic plans. As a State, we are concerned mainly with agriculture and trade. As you know, and as I have detailed before, we have been able to put through our "land to

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the tiller" legislation and make of it a practical success. Land and all it means is an inestimable blessing to our peasants who have dragged along in servitude to the landlord and his allies for centuries without number. We have been able under present conditions to carry these reforms through ; are we sure that in alliance with landlord-ridden Pakistan, with so many feudal privileges intact, that this economic reforms of ours will be tolerated ? We have already heard that news of our Land Reforms has travelled to the peasants to the enemy-occupied area of our State, who vainly desire a like status, and like benefits. In the second place, our economic welfare is bound up with our arts and crafts. The traditional markets for these precious goods, for which we are justly known all over the world, have been centered in India. The volume of our trade, inspite of the dislocation of the last few years, shows this. Industry is also highly important to us. Potentially we are rich in minerals, and in the raw materials of industry ; we need help to develop our resources. India, being more highly industrialised than Pakistan, can give us equipment, technical services and materials. She can help us too in marketing. Many goods also which it would not be practical for us to produce here – for instance, sugar, cotton cloth, and other essential commodities – can be got by us in large quantities from India. It is around the efficient supply of such basic necessities that the standard of living of the man-in-the-street depends.

I shall refer now to the alleged disadvantages of accession to India.

To begin with, although the land frontiers of India and Kashmir are contiguous, an all-weather road-link is dependable as the one we have with Pakistan does not exist. This must necessarily hamper trade and commerce to some extent, particularly during the snowy winter months. But we have studied this question and with improvements in modern engineering, if the State wishes to remain with India the establishment of an all-weather stable system of communication, is both feasible and easy. Similarly, the use of the State rivers as a means of timber transport is impossible if we turn to India, except in Jammu where the river Chenab still carries logs to the plains. In reply to this argument, it may be pointed out that accession to India will open up possibilities of ultlising our forest wealth for industrial purposes and that, instead of lumber, finished goods, which will provide work for our carpenters labourers, can be exported to India where there is a ready market for them. Indeed in the presence of our fleets of timber-carrying trucks, river-transport is a crude system which inflicts a loss of some 20% to 35% in transit.

Still another factor has to be taken into consideration. Certain tendencies have been asserting themselves in India which may in the future convert it into a religious State wherein the interests of Muslims will be jeopardised. This would happen if a communal organisation had a dominant hand in the

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Government, and Congress ideals of the equality of all communities were made to give way to religious intolerance. The continued accession of Kashmir to India should, however, help in defeating this tendency. From my experience of the last four years, it is my considered Judgement that the presence of Kashmir in the Union of India has been the major factor in stablising relations between the Hindus and Muslims of India. Gandhiji was not wrong when he uttered words before his death which paraphrase, "I lift up mine eyes unto the hills, from whence cometh my help".

As I have said before, we must consider the question of accession with an open mind, and not let our personal prejudices stand in the way of a balanced Judgement. I will not invite you to evaluate the alternative of accession to Pakistan.

The most powerful argument which can be advanced in her favour is that Pakistan is a Muslim State, and, a big majority of our people being Muslims the State must accede to Pakistan. This claim of being a Muslim State is of course only a camouflage. It is a screen to dupe the common man, so that he may not see clearly that Pakistan is a feudal State in which a clique is trying by these methods to maintain itself in power. In addition to this, the appeal to religion constitutes a sentimental and a wrong approach to the question. Sentiment has its own place in life, but often it leads to irrational action. Some argue, as supposedly natural corollary to this, that our acceding to Pakistan our annihilation or survival depends. Facts have disproved this. Right-thinking men would point out that Pakistan is 'not an organic unit of all the Muslims in this sub-continent. It has on the contrary, caused the dispersion of the Indian Muslims for whose benefit it was claimed to have been created. There are two Pakistan at least a thousand miles apart from each other. The total population of Western Pakistan which is contiguous to our State, is hardly 25 million, while the total number of Muslims resident in India is as many as 40 million. As one Muslim is as good as another, the Kashmiri Muslims if they are worried by such considerations should choose the forty millions living in India.

Looking at the matter too from a more modern political angle, religious affinities alone do not and should not normally determine the political alliances of States. We do not find a Christian bloc, a Buddhist bloc, or even a Muslim bloc, about which there is so much talk nowadays in Pakistan. These days economic interests and a community of political ideals more appropriately influence the policies of States.

We have another important factor to consider, if the State decides to make this the predominant consideration. What will be the fate of the one million non-Muslims now in our State ? As things stand at present, there is

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no place for them in Pakistan. Any solution which will result in the displacement or the total subjugation of such a large number of people will not be just or fair, and it is the responsibility of this House to ensure that the decision that it takes on accession does not militate against the interests of any religious group.

As regards the economic advantages, I have mentioned before the road and river links with Pakistan. In the last analysis, we must however remember that we are concerned only with the movement of people but also with the movement of goods and the linking up of markets. In Pakistan there is a chronic dearth of markets for our products. Neither, for that matter, can she help us with our industrialisation, being herself industrially backward.

On the debit side we have to take into account the reactionary character of her politics and State policies. In Pakistan, we should remember that the lot of the States' subjects has not changed and they are still helpless and under the heel of their Rulers, who wield the same unbridled power under which we used to suffer here. This clearly runs counter to our own aspirations for freedom.

Another big obstacle to a dispassionate evaluation of her policies is the lack of a Constitution in Pakistan. As it stands at present, this State enjoys the unique position of being governed by a Constitution enacted by an outside. Parliament which gives no idea whatsoever of the future shape of civic and social relations. It is reasonable to argue that Pakistan cannot have the confidence of a freedom-loving and democratic people when it has failed to guarantee even Fundamental rights of its citizens. The right of self-determination for nationalities is being consistently denied and those who fought against Imperialism for this just right are being suppressed with force. We should remember Badshah Khan and his comrades who laid down their all for freedom, also Khan Abdus Samad Khan and other fighters in Baluchistan. Our national movement in the State considers this right of self-determination inalienable, and no advantage, however great, will persuade our people to forego it.

The third course open to us has still to be discussed. We have to consider the alternative of making ourselves an Eastern Switzerland, of keeping aloof from both States, but having friendly relations with them. This might seem attractive in that it would appear to pave the way out of the present deadlock. To us as a tourist country it could also have certain obvious advantages. But in considering independence we must not ignore practical considerations. Firstly, it is not easy to protect sovereignty and independence in a small country which has not sufficient strength to defend itself on our long and difficult frontiers bordering so many countries.

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Secondly, we must have the goodwill of all our neighbours. Can we find powerful guarantors among them to pull together always in assuring us freedom from aggression ? I would like to remind you that from August 15 to October 22, 1947, our State was independent and the result was that our weakness was exploited by the neighbour with whom we had a valid Standstill Agreement. The State was invaded. What is the guarantee that in future too we may not be victims of a similar aggression ?

I have now put the pros and cons of the three alternatives before you. It should not be difficult for men of discrimination and patriotism, gathered in this Assembly to weigh all these in the scales of our national good and pronounce where the true well-being of the country lies in the future.

Mr. President, it will be fitting here if I, on this solemn occasion remember the last words of one of our martyrs which still ring in my ears. In 1931, the State Police had fired on our demonstrators, and many lay wounded and dying in the grounds of the Jammu Mosque. One man, supported by his old mother and young wife, was nearing his last breath and he comforted them in their misery, forgetting his own. Then he called for me. When I came to him he looked me straight in the eyes and said, "We have done our duty. Now it is for you and the nation to carry it through to a successful end." Perhaps the spirit of that hero is in this Hall today to see one fulfilment of his dreams and the dreams of this land of Kashmir. Today is a day of fulfilment for all – a day when we finally and triumphantly assert our right to decide our own future, free from threats of force and outside dictation.

On this historic day, we remember that Prime Minister of India, our cherished friend and never-failing comrade on this difficult journey and, besides, and illustrious son of Kashmir, the many friends in India and some even in Pakistan, who in the years before partition, helped for us forward. We remember the Ahrars who went to jail in their thousands for us ; Badshah Khan and our friends of the Frontier, now in jails and fighting for their own freedom. Nor can we ever forget our kith and kin across the cease-fire line who are at present living under the heel of the enemy. Their welfare is always dear to us and we shall continue to regard them as an integral part of ourselves.

For twenty years, Mr. President, we have journeyed to this day and our criterion in all we do must be the welfare of our people. This consideration alone must guide our decisions.

Now again, I have put my deepest thoughts before you and may God, in His mercy, lead us all forward on the right path."

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APPENDIX XIII

REGULATION REGARDING THE FLAG FOR THE J & K STATE OF JUNE 7, 1952

"The flag of the Jammu & Kashmir State shall be rectangular in shape and red in colour with there white equidistant, vertical stripes of equal width next to the staff and a white plough in the middle with its handle facing the stripts.

The ratio of which to the length of the flag shall be 2 : 3"."

(C.A. Deb. III no. 1, Saturday June 7, 1952. P-29)

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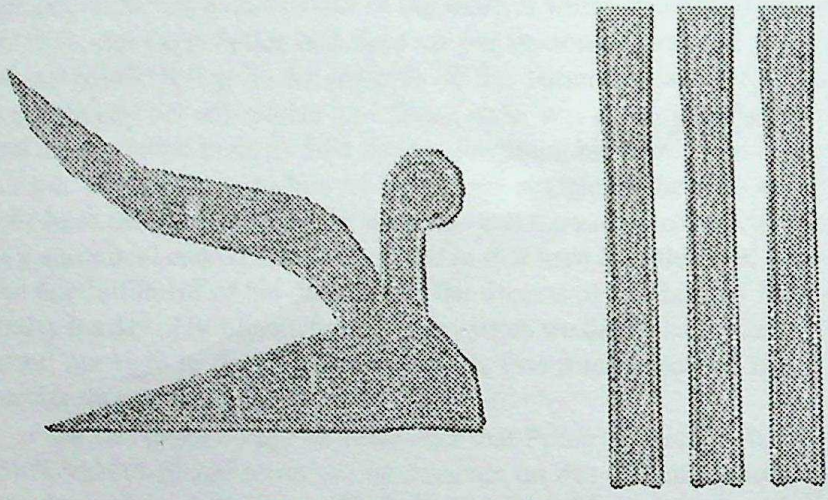
APPENDIX XIV

THE FLAG FOR THE JAMMU AND KASHMIR STATE



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APPENDIX XV

INTERIM REPORT OF THE BASIC PRINCIPLES COMMITTEE OF JUNE 10, 1952

While proceeding with the task assigned to it, the Basic Principles Committee has felt it imperative to seek a clear directive from the Constituent Assembly with regard to the basic character and shape of the future Constitution of the Jammu and Kashmir State. In order to determine its broad framework it is essential to know whether it will be based on the total application of the principles of democracy or whether the existing system of Constitutional monarchy should continue. This naturally involves an immediate consideration of the future status of the Ruling dynasty of the Jammu and Kashmir State and only a decision on this Fundamental issue will enable the Committee to proceed further with the task of finalising the principles of the draft Constitution.

The Committee has carefully examined the nature of the title and claim of the Ruling Dynasty of the Jammu and Kashmir State, which it derived from the Treaty of 1846. The Committee has no doubt that the Treaty was the natural consequence of the British Imperial policy in the Indian sub-continent which perpetuated and intensified feudal and autocratic rule in certain territories of the sub-continent.

When the popular upsurge for independence compelled the British Government to withdraw from the sub-continent, the Paramountcy exercised by it over these States lapsed and it was obvious that the insquitous relationships which the British Government had entered into with the Indian Princes would automatically terminate. But the failure of the British Government to recognize a status of equality and independence on par with the status conferred upon the people of the Provinces ruled by it directly, created an anamolous situation. While in the rest of India, sovereignty was restored to the people, in the Indian States, it continued to be vested in an individual who was all along functioning under the protection and suzerainty of the British Government.

The people of our State, along with those of other Indian States, resisted this relationship which condemned them to bondage and feudal exploitation. Their resentment found expression in their organised struggles against this unjust and discriminatory treatment meted out to them. They sought repudiation of this ambiguous Constitutional arrangement and demanded the right of self-determination for themselves, prompted by the same urges that had moved the people in other parts of India.

The outmoded and anachronistic character of the dynastic rule was brought to light sharply by the crisis with which the State was faced in 1947.

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The general feeling of resentment against this autocratic system had corroded it to such an extent as left no doubt in its futility and incompetence to render elementary functions of guaranteeing the security of life and property of the citizens in times of a severe crisis. It was, therefore, natural that this unpopular system should yield place to a representative form of Government ; but the nature and magnitude of the emergency facing our State made it impossible to effect any drostic changes in the Constitutional set up during these critical times. The peoples representatives while tackling the difficult task of administration under stress of abnormal conditions had to function within the same work of the existing Constitutional setup.

There was a major change in the situation when in March 1948, the Maharaja had to entrust the work of day to day administration to a popular Ministry but it was soon obvious that this arrangement could not work smoothly and stood in the way of progress and development. Consequently, the Majaraja who was conscious of his erstwhile power and privileges, incapable of any adjustment to the changed conditions, was forced to retire and was succeeded by Yuvraj Karan Singh, who assumed the functions of a Constitutional Ruler acitng on the advice and guidance of his Cabinet.

This was obviously an interim arrangement subject to examination and revision by a properly elected body of the people's representatives. Accordingly the Constituent Assembly came into being in October 1951, with sovereign powers.

The Basic Principles Committee feels that the time has come when a final decision should be taken in regard to the institution of hereditary rulership.

After due deliberation and careful thought, the Committee is of the opinion that the institution of monarchy is a relic of the feudal system which was based on mass exploitation of the resources of a country and the labour of its people for the self-aggrandisement of an individual and a limited class of his associates. As such, the Committee considers this system opposed to the aspirations of the people for an untrammelled democratic orders, the spirit of which is surging throughout all countries of the world. It strongly feels that the continuance of a monarchical system would be the imposition of an anachronism particularly when these monarchies are disappearing fast in many parts of the world under the compelling forces of history and social change.

It is the considered view of the Committee that sovereignty does and must reside in the people and that all power and authority must flow from the expression of their free will. The State and its Head, respectively, symbolise this sovereignty and its centre of gravity. The Head of the State represents the authority vested in him by people for the maintenance of

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their rights. The promotion of this vital principal of Constitutional progress makes it imperative that this symbol of State power should be subject to the vote of the people. The Committee therefore strongly feels that, consistent with the democratic aspirations of the people of the State, the office of Head of the State should be based upon the elective principle and not upon the principle of heredity. This would afford opportunities to all citizens to rise to the highest point of authority and position, with the support and confidence of the people. The spirit of equality and fraternity, required by democracy demands that in no sphere of State activity should a citizen be debarred from participating in the progress of his country and the advancement of its deals and traditions. It is clear that the hereditary principle in the appointment to any office of power curtails the people's choice and to that extent, restricts their rights to elect suitable person of outstanding merit and personal qualities to that position. The process of democratisation will not be complete till the highest office of the State is thrown open to the humblest of the land and in this manner, the Head of the State will be repository of the unbounded respect, confidence and esteem of the people.

In view of these considerations the Committee feels that there must be a sense of finality about the decisions in regard to this Fundamental issue. Accordingly, the Committee recommends that :

(*a*) the form of the future Constitution of Jammu and Kashmir shall be wholly democratic.

(*b*) the institution of hereditary Rulership shall be terminated.

(*c*) the office of the Head of the State shall be elective.

Sd/- S. M. Abdullah
" G. M. Bakhshi
" M. A. Beg.
" G.L. Dogra
" S.L. Saraf
" D.P. Dhar
" Piara Singh
" Harbans Singh
" Mubarik Shah
" G.M. Hamdani
" Mir Qasim
" Bhagat Ram Sharma
" Abdul Gani Goni
" Ram Devi
" Moti Ram Baigra
" Ram Piara Saraf
" Mir Assadullah.

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APPENDIX XVI

AN EXTRACT FROM THE TEXT OF THE KASHMIR PREMIER'S STATEMENT ON THE DELHI AGREEMENT IN THE STATE CONSTITUENT ASSEMBLY ON THE 11TH AUGUST, 1952

The Government of India held the view that the fact that the Jammu and Kashmir State was a constituent unit of the Union of India led inevitably to certain consequences in regard to some important matters, namely :

(*a*) Residuary Powers,
(*b*) Citizenship,
(*c*) Fundamental Rights,
(*d*) Supreme Court of India,
(*e*) National Flag,
(*f*) The President of India,
(*g*) The Headship of the State,
(*h*) Financial Integration,
(*i*) Emergency Provisions, and
(*j*) Conduct of elections to House of Parliament.

The details of each one of these items of the agreements arrived at between the Jammu and Kashmir Government and the Government of India in relation to them are :

Residuary Powers

It was agreed that while under the present Indian Constitution, the Residuary, Powers vested in the Centre in respect of all the States other than Jammu and Kashmir, in the case of our State, they rested in the State itself. This position is compatible with Article 370 of the Indian Constitution and the Instrument of Accession on which this Article is based. We have always held that the ultimate source of sovereignty resides in the people. It is, therefore, from the people that all powers can flow. Under these circumstances, it is upto the people of Kashmir through this Assembly to transfer more powers for mutual advantage to the custody of the Union Centre.

Citizenship

It was agreed that in accordance with Article 5 of the Indian Constitution persons who have their domicile in the Jammu and Kashmir State shall be the citizens of India. It was further agreed that the State Legislature shall have power to define and regulate the rights and privileges of the permanent

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residents of the State, more especially in regard to acquisition of immovable property, appointments to services and like matters. Till then the existing State law would apply. It was also agreed that special provision should be made in the laws governing citizenship to provide for the return of those permanent residents of Jammu and Kashmir State, who went to Pakistan in connection with the disturbances of 1947 or in fear of them as well as of those who had left for Pakistan earlier but could not return. If they returned, they should be entitled to the rights, and privileges and obligations of citizenship.

Fundamental Rights

It was agreed, however, that the Fundamental Rights, which are contained in the Constitution of India could not be conferred on the residents of the Jammu and Kashmir State in their entirety taking into account the economic, social and political character of our movements as enunciated in the New Kashmir Plan. The need for providing suitable modifications, amendments and exceptions as the case may be in the Fundamental Rights' Chapter of the Indian Constitution in order to harmonize those provisions with the pattern of our principles was admitted. Particular care would have to be taken to preserve the basis character of the decisions taken by this House on the question of land compensation as well as the laws relating to the transfer of land to the tiller their and other matters. The main point to be determined is whether the Chapter of our Fundamental Rights should form a part of the Kashmir Constitution or that of the Union Constitution.

Supreme Court

It was agreed that the Supreme Court should have original jurisdiction in respect of disputes mentioned in Article 131 of the Constitution of India. It was further agreed that the Supreme Court should have jurisdiction in regard to Fundamental Rights which are agreed to by the State.

On behalf of the Government of India, it was recommended that the Advisory Board in the State designated "His Highness's Board of Judicial Advisors" should be abolished and the jurisdiction exercised by it should be vested in the Supreme Court of India. That is to say that the Supreme Court should be the final Court of appeal in all civil and criminal matters as laid down in the Constitution of India.

We, however, felt that would need a detailed examination and consequently it was agreed that we should have time to consider it further.

National Flag

We agreed that in view of the clarifications issued by me in my public Statements which interpreting the resolution of this House according to which the old Stage flag was substituted by a new one, it was obvious that the new State flag was in no sense a rival of the National flag. But for historical and other reasons, connected with the freedom struggle in the

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State, the need for the continuance of this flag was recognised. The Union flag to which we continue our allegiance as a part of the Union will occupy the supremely distinctive place in the State.

President of India

It was agreed that the powers to grant reprieve and commute death sentences, etc. should also belong to the President of the Union.

Headship of the State

I am glad to inform this House that the Government of India have appreciated the principle proposed by the Basic Principle Committee as adopted by this Assembly in regard to the abolition of the hereditary rulership of the State. In order to accommodate this principle, the following arrangement was mutually agreed upon :

(*i*) The Head of the State shall be the person recognized by the President of the Union on the recommendation of the Legislature of the State.

(*ii*) He shall hold office during the pleasure of the President.

(*iii*) He may, by writing under his hand addressed to the President, resign his office.

(*iv*) Subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office.

(*v*) Provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office.

Financial Integration

In regard to this subject, we agreed that it would be necessary to evolve some sort of financial agreement between the State and the Indian Union. But as this involved far-reaching consequences, it was felt that a detailed and objective examination of this subject would be necessary.

Emergency Powers

On behalf of the Government of India, it was Stated the application of Article 352 of the Constitution was necessary as it related to vital matters affecting the security of the State. They did not press for the application of Article 356 or 360.

On behalf of the Kashmir Delegation, it was Stated that the application of Article 352 to the State was not necessary. In the event of war or external aggression, item I in the Seventh Schedule relating to the defence of India applied and the Government of India would have full authority to take any steps in connection with the defence, etc. In particular, we were averse to internal disturbance being referred to in this connection, as even some petty internal disorder might be considered sufficient for the application of Article 352.

In reply it was pointed out that Article 352 could only be applied in a State of grave emergency and not because of some small disorder or disturbance.

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In order to meet our viewpoint, it was suggested on behalf of the Government of India that Article 352 might be accepted as it is with the addition at the end of the first paragraph (1) of the following words : "but in regard to internal disturbance at the request or with the concurrence of the Government of the State".

We generally accepted this position, but wanted some time to consider the implications and consequences as laid down in Article 353, 358 and 359 which on the whole we accepted. In regard to Article 354, we wanted to examine it further before expressing our opinion.

Conduct of Elections to Houses of Parliament

Article 324 of the Indian Constitution already applies to the State in so far as it relates to election to Parliament and to the offices of the President and the Vice-President of India.

I have put before this House the broad indications of the agreements arrived at between us and the Government of India. 'As the Hon'ble Members will no doubt, observe, the attitude of the Government of India has been most helpful. A satisfactory position has emerged and we are now able to assess the basic issues of our Constitutional relationship with India in clearer terms. There has been a good deal of accommodation of our respective points of view. Both the representatives of the Government of India and the Kashmir Delegation, have been impelled by the desire to strengthen further the existing relationship to remove all obscurity and vagueness. We are convinced, as ever before, that we have the full support both of the Government and the people of India in the fulfilment of our democratic ideals and the realization of our objectives.

This goodwill and amity, I am sure, will result in the consolidation of freedom and democracy in our country. I may, however, emphasize that the supreme guarantee of our relationship with India is the identity of the democratic and secular aspirations, which have guided the people of India as well as those of Jammu Kashmir in their struggle for emancipation and before which all Constitutional safeguards will take a secondary position.

It is, of course, for the Constituent Assembly, which is seized of these matters, to determine the extend the scope of the State's accession to India. The Assembly may agree to continue this relationship on the present basis or extent its scope as it might like and consider feasible and proper. In the course of framing the Constitution for the State, the Hon'ble Members of this Assembly will have an opportunity of discussing these agreements and expressing their views thereon.

I thank you, Sir, for affording me this opportunity to place before the Hon'ble Members of this House the result of our recent talks with the representatives of the Government of India.

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APPENDIX XVII

RESOLUTION OF TERMINATION OF HEREDITARY RULERSHIP IN THE STATE OF AUGUST 20, 1952, ALONG WITH SCHEDULE INDICATING THE METHOD OF ELECTION, QUALIFICATION ETC. OF THE HEAD OF THE STATE

Resolution

Whereas this Assembly adopted the recommendations contained in the Interim Report of the Basic Principles Committee presented on the 10th of June, 1952.

And whereas by its resolution, dated the 12th June, 1952, this Assembly directed that the recommendations so adopted be implemented and for that purpose charged the Drafting Committee to submit appropriate proposals ;

Now, therefore, in pursuance of the resolution dated the 12th June, 1952, and having considered the report of the Drafting Committee, this Assembly resolves :

1. (*i*) that the Head of the State shall be the person recognised by the President of the Union on the recommendations of the Legislative Assembly of the State ;

(*ii*) he shall hold office during the pleasure of the President ;

(*iii*) he may, by writing under his hand, addressed to the President, resign his office ;

(*iv*) subject to the foregoing provisions, the Head of the State shall hold office for a term of five years from the date he enters upon his office,

Provided that he shall, notwithstanding the expiration of his term, continue to hold the office until his successor enters upon his office ;

2. that the recommendation of Legislative Assembly of the State in respect of the recognition of the Head of the State specified in sub-para (i) of paragraph I, shall be made by election ;

3. that the method of election to, qualifications for and all other matters pertaining to the office of the Head of the State shall be prescribed, in the Constitution, and until these are so prescribed, shall be as set out in the rules contained in the schedule annexed to this resolution ;

4. that the Head of the State shall be designated as the Sadar-i-Riyasat ;

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5. that the Sadar-i-Riyasat shall be entitled to such emoluments, allowances and privileges as may be prescribed in the Constitution and pending the framing of the Constitution tot such emoluments, allowances and privileges as may be decided by this Assembly by separate resolution.

6. that the Sadar-i-Riyasat shall exercise such powers and perform such functions as may be prescribed in the Constitution to be framed by this Constituent Assembly, and until such Constitution is framed, he shall exercise such powers and perform such functions as have hitherto been exercised by His Highness under the Jammu and Kashmir Constitution Act 1996, as amended by Act. No. XVII of 2008.

7. that in the event of the occurrence of a casual vacancy in the office of the Sadar-i-Riyasat by reason of his death, resignation or otherwise, the powers and functions exercisable by the Sadar-i-Riyasat shall, until the assumption of office by the newly elected Sadar-i-Riyasat in accordance with the procedure laid down in this resolution, be exercised and performed by the person recommended by the State Government for recognition as Officiating Sadar-i-Riyasat to the President of India ; and

8. that this Assembly shall in due course provide a suitable remedy in respect of violation of the Constitution or gross misconduct by the person for the time being holding the office of the Sadar-i-Riyasat.

This Assembly further resolves :

that the Prime Minister of Jammu and Kashmir State is authorized to communicate a copy of this resolution to the Government of India for favour of appropriate action to enable its being given effect to."

Schedule (para 3)

1. Qualifications – (*i*) No person shall be eligible for election to the office of the Sadar-i-Royasat, unless he

(*a*) is a State Subject of Class I as defined in the State Subject Definition Notification No. I-L/84 dated 20th April, 1927,

(*b*) has completed the age of 21 years, and

(*c*) is not subject to any of the disqualifications specified in rule 4 of the Jammu and Kashmir Constituent. Assembly Election (Part 1) Rules, 2008 for being chosen as a member of the Constituent Assembly.

(*ii*) A person shall not be eligible for election as the Sadar-i-Riyasat if he holds any office of profit under the Government or under any local or other authority subject to the control of the Government.

2. The Sadar-i-Riyasat shall not be a member of the Legislative Assembly of the State, or if a member of the Legislative Assembly of the

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State, he shall be deemed to have vacated his seat in the House on the date he enters upon his office as the Sadar-i-Riyasat.

3. The Sadar-i-Riyasat shall hold no other office of profit.

4. Method of Election – (1) When election to the office of the Sadar-i-Riyasat becomes necessary, the Speaker of the State Legislative Assembly shall fix time and date for the holding of the election and shall cause a notice thereof to be sent to every member.

(2) At any time before noon on the date preceding the date so fixed, any member of the State Legislative Assembly may nominate another person for election by delivering to the Speaker or any office authorised by the Speaker in this behalf, a nomination paper in the form prescribed in the annexure to this schedule signed by himself as proposer and by another member as seconder.

(3) Any person who has been so nominated may withdraw his candidature in writing addressed to the Speaker at any time before the Assembly proceeds to hold the election.

(4) At the time fixed for election under sub-clause (I), the Speaker or in his absence the person presiding shall read out to the Assembly the names of the persons who have been duly nominated and have not withdrawn their candidature together with those of their proposers and seconders and, if there is only such candidate, shall declare him to be duly elected. If there is more than one such candidate the Assembly shall proceed to elect the Sadar-i-Riyasat by ballot.

(5) Where there are only two candidates for election, the candidate who obtains at the ballot the larger number of votes shall be declared elected. If they obtain an equal number of votes, the Speaker or in his absence the person presiding shall exercise his casting vote and the person in whose favour such vote is cast shall be declared elected.

(6) Where more than two candidates have been nominated and at the first ballot no candidate obtains more votes than the aggregate votes obtained by the other candidates the candidate who has obtained the smallest number of votes shall be excluded from the election, and balloting shall proceed, the candidate obtaining the smallest number of votes at each ballot being excluded from the election, until one candidate obtains more votes than the remaining candidates or than the aggregate votes of the remaining candidates, as the case may be, and such candidate shall be declared elected.

(7) Where at any ballot any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under sub-clause (6), the determination as between the candidates whose votes are equal, of the candidate who is to be excluded shall be by the casting vote of the Speaker or in his absence of the person presiding.

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5. The Prime Minister of the State shall communicate the name of the person duly elected by the Assembly as the Sadar-i-Riyasat to the President of India for being recognized as the Sadar-i-Riyasat.

6. Oath – The Sadar-i-Riyasat shall, before entering upon his office, make and subscribe in the presence of Chief Justice of the State High Court on in his absence any Judge of the High Court available an oath or affirmation in the following form, namely :

"I, A, B, swear in the name of God/Solemnly affirm that I will faithfully execute the office of the Sadar-i-Riyasat Jammu Wa Kashmir and will to the best of my ability preserve, protect and defend the Constitution of the State as by law established and that I will devote myself to the Service and wellbeing of the people of the State."

ANNEXURE TO THE SCHEDULE

Nomination Paper

Election to the office of the Sadar-i-Riyasat.

We hereby nominate .....

.....(Full name and address of candidate)

.....

as a candidate for election to the office of the Sadar-i-Riyasat, Jammu and Kashmir.

We have verified, and do hereby declare, that the said candidate is eligible for election as the Sadar-i-Riyasat under the Schedule to the Resolution dated ..... August, 1952, of the Constituent Assembly.

Signature of Proposer .....

Name of Constituency .....

Date .....

Signature of Seconder .....

Name of Constituency .....

Date .....

I assent to this nomination.

Signature of candidate .....

Date .....

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APPENDIX XVIII

REPORT OF THE EMBLEM COMMITTEE OF NOVEMBER 12, 1952

"This Assembly resolves that the Emblem of the State of Jammu and Kashmir shall be a shield – like figure with three equidistant horizontal stripes and a full bloomed lotus on its top with two phoughs facing each other around its edges ; the whole surrounded by two ears of corn with the inscription 'Jammu and Kashmir' at its bottom as per desine."

(C.A. Deb. vol V No. 11 dated Nov. 13, 1952 Wednesday. P.5)

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APPENDIX XIX

EMBLEMS FOR THE J & K STATE

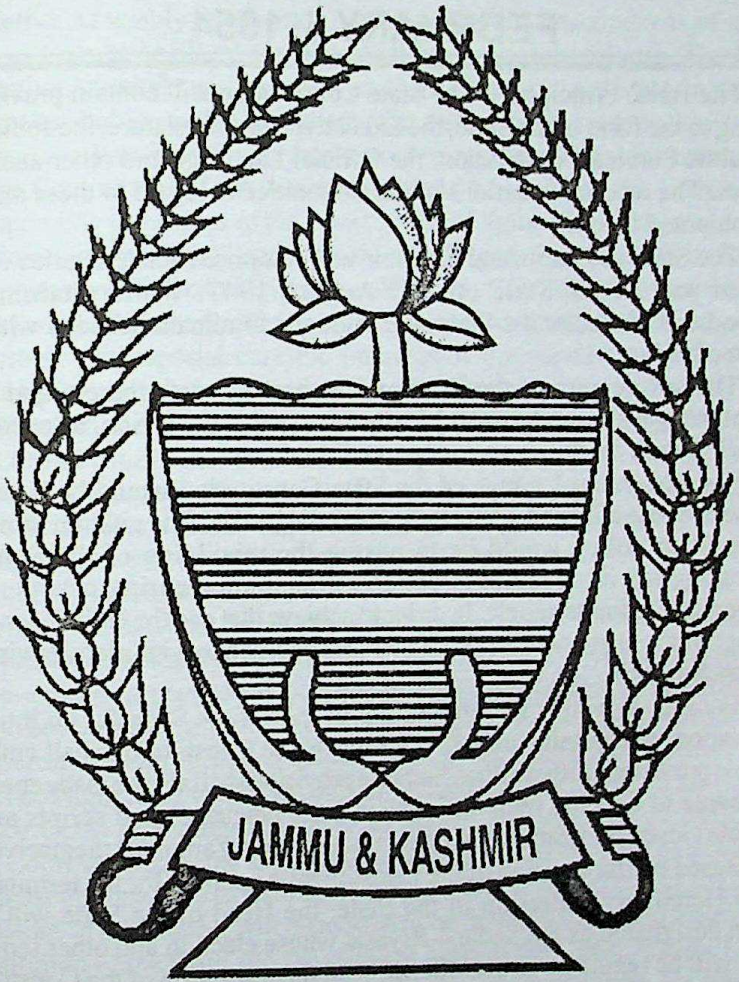

Fig.

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APPENDIX XX

REPORTS OF THE BASIC PRINCIPLES COMMITTEE AND THE ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS AND CITIZENSHIP DATED FEBRUARY 6, 1954

The Basic Principles of the State Constitution will contain provisions relating to the form of the State, the Executive, the Legislature, the Judiciary, the Public Service Commission, the Official Language and other ancillary matters. The recommendations of the Committee in regard to these matters are contained below :

The State of Jammu and Kashmir will comprise such territories which formed part of the State on 15th August, 1947. While retaining its autonomous character the State will continue to remain acceded with the Union of India.

The sovereignty of the State resides in the people thereof and shall except in regard to matters specifically entrusted to the Union, be exercised on their behalf by the various organs of the State.

The governing features of the State Constitution would be based on democracy, equality and social and economic justice. The guiding principle of the State policy would be to ensure the rebuilding of the State by harnessing all its resources for the purpose of securing a better and prosperous life for its people. In order to achieve that end the entire economic activity of the State will be conducted in accordance with plans envisaged in New Kashmir.

In order to satisfy the urge of the people of the State for an intimate association with administration at all levels the Constitution shall embody suitable provisions to that effect. Suitable provision shall also be made enabling the people to develop their various cultures, languages and scripts and to promote closer association and better understanding amongst themselves.

Based on the decision of the Constituent Assembly for the termination of the Hereditary Rulership in the State, the Head of the State will be a person designated as the Sadar-i-Riyasat whose election and other terms of office will be regulated in accordance with the resolution of the Constituent Assembly 21st August, 1952.

The superintendence, direction and control of the Government will vest in a Council of Ministers headed by the Prime Minister who will be appointed by the Sadar-i-Riyasat. The Prime Minister will be the person who enjoys the confidence of the State Legislative Assembly. The Council of Ministers will be collectively responsible to the State Legislative Assembly.

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The State Legislative Assembly will be composed of members chosen by direct election who will represent constituencies determined by Law. The determination of constituencies will be on population basis and on the scale of one member for every 40,000 of the population. Election to the State Legislative Assembly shall be on the basis of adult suffrage, that is to say, every male or female who has attained the age of 18 years and is not otherwise disqualified under the Constitution or any Law made by the State Legislative Assembly on grounds of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall have the right to vote. The State Legislative Assembly will have powers to make laws for the State, in respect of all matters falling within the sphere of its residuary sovereignty. Its life will be five years. Provision for the rights, powers and privileges of the members and the Committees of the Assembly should be made on the lines of the corresponding provisions of the Constitution of India. The superintendence, direction and control of al elections to the State Legislative Assembly including the appointment of Election Tribunals will vest in a Commission to be appointed by the Sadar-i-Riyasat. Provision will also have to be made for a fixed period to promote with special care the interests of the weaker sections of the people by ensuring their representation in the Assembly.

The Judiciary of the State will be independent of executive. The High Court of Judicature shall consist of the Chief Justice and two or more other Judges as the Sadar-i-Riyasat may from time to time appoint. In order to ensure the independent and impartial character of the High Court, a Judge of the High Court will not be removed from his office except by an order of Sadar-i-Riyasat passed after an address by the Assembly supported by a majority of not less than two thirds of the total membership of the House has been presented to the Sadar-i-Riyasat in the same session for such removal, on the ground of proved misbehaviour or incapacity. Provisions will also have to be made for the terms and conditions of service of High Court Judges commensurate with the independence and dignity of the High Court.

The High Court will be a Court of Record and shall have all the powers of such Court including the power to punish for contempt of itself. The High Court shall have the same powers and jurisdiction as are exercised by it at present under the Constitution or any other law in force in the State. Provisions in this respect will be modelled on those contained in the existing Constitution of the State and the relevant parts of the Constitution of India. Adequate provisions shall also be made in the Constitution for ensuring independence and integrity of the subordinate Courts.

An appeal shall lie to the Supreme Court of India from a Judgement, decree or final order of the High Court in Civil proceedings if the High Court certifies that the amount or value of the subject matter of the dispute in the Court of first instance and still in dispute on appeal was and is not less than 20,000 rupees or that the case is a fit one for appeal to the Supreme

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Court. Similarly an appeal shall lie to the Supreme Court of India in criminal matters if the High Court has no appeal reversed an order of acquittal of an accused person and sentenced him to death or has withdrawn for trial before itself any case from any subordinate Court and has in such trial convicted the accused person and sentenced him to death and lastly if the High Court certifies that the case is a fit one for appeal to the Supreme Court. An appeal shall also lie to the Supreme Court of India in certain civil, criminal or other proceedings if the High Court certifies that the case involves a substantial question of law as to the interpretation of the provisions of the Constitution of India which apply to the State under Article 370 of the Constitution. The original jurisdiction of the Supreme Court will extent to disputes between the Centre and States or States interse as specified in Article 131 of the Constitution of India.

Provisions with regard to the establishment of a Public Service Commission should be made in the Constitution. The appointment of its Chairman and members will be made by the Sadar-i-Riyasat. It will function independent of executive. Its Chairman and other members will be removable from office in the manner provided for the removal of a High Court Judge.

The Official Language of the State will be Urdu, but English language may be used for all official purposes for which it is being used at present. The Constitution should also recognise the regional languages of the various cultural units of the State as also the official language of the Union for the purposes of the Union or the proceedings of the Supreme Court or for communication between the Union and the State, interse.

Further provisions relating to the transitional and ancillary matters should be incorporated in the Constitution. Necessary provisions should also be incorporated in the Constitution ensuring that an amendment of the Constitution shall be made only by two thirds majority of the total membership of the Assembly.

The State of Jammu and Kashmir having acceded to the Union of India, it becomes necessary to define the relationship of the State with Centre. This relationship was originally based on the Instrument of Accession whereby the State of Jammu and Kashmir acceded to the Union of India in matters of Defence, Foreign Affairs and Communication. When the dominion of India became a republic, the relationship of the State with the Union was embodied in Art. 370 of the Union Constitution. The State's accession to the Union entails certain responsibilities on the Centre for protecting the interests of the State and also for its social and economic development. In order to enable the centre to discharge its responsibilities which devolve upon it under the Constitution, those provisions of the Constitution of India which may be necessary for this purpose should be made applicable to the State in an appropriate manner. While preserving the internal autonomy of the State all the obligations which flow from the fact of accession and also its elaborations as contained in the Delhi Agreement

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should find an appropriate place in the Constitution. The Committee is of the opinion that it is high time that finality in this respect should be reached and the relationship of the State with the Union should be expressed in clear and precise terms. The Committee accordingly recommends :

(*i*) that a directive be issued to the Drafting Committee to bring up appropriate proposals defining the sphere of Union Jurisdiction in the State suggesting additions, modifications and amendments wherever necessary in the Constitution (Application to Jammu and Kashmir) order, 1950 to suit requirements of the State :

(*ii*) that the Drafting Committee should forthwith take up the drafting of the Constitution for the State in the light of the recommendations contained in this report and such other reports as have been or are adopted by this Assembly from time to time.

REPORT RELATING TO CITIZENSHIP AND FUNDAMENTAL RIGHTS

The Advisory Committee on Fundamental Rights and Citizenship was set up by the resolution of the Constituent Assembly dated 7th November, 1951, in order to make recommendations as regards qualifications required for Citizenship and the determination of Fundamental Rights of the residents of the State. The Committee was reconstituted by the Constituent Assembly by its resolution dated the 20th October, 1953.

The State having acceded to the Union of India, every State Subject and every person having his domicile in the State is a Citizen of India under the provisions of the Constitution of India. It is, however, recognized by the Government of India that this position would not affect the existing State Subject definition. While the Committee adheres to principle underlying this definition, it feels that the definition should be liberalized in keeping with the changed times. The Committee therefore recommends that all the three classes of State Subjects provided in the definition be removed and a uniforms class of permanent residents be established. Accordingly every person residing in the State who is a State Subject of Class I or Class II or who after having acquired immovable property in the State has been ordinarily residing there for a period of not less than ten years prior to the date of enforcement of this provision shall be a permanent resident of the State.

The power of the State Legislature to define 'Permanent Residents of the State' in future in any manner it deems fit and to regulate the special rights and privileges of the permanent Residents of the State should be preserved. A majority of not less than two-thirds of the total membership of the House shall be necessary for the exercise of this power. He Committee is of the opinion that while adequate provisions to that effect should be incorporated at an appropriate place in the Constitution of India, the

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provisions of Part II of the Constitution of India relating to Citizenship should also be made applicable to the State and care should be taken to protect the special position accorded to the State Subjects to be now known as "Permanent Residents of the State" and their special rights and privileges. Necessary modification shall also have to be provided in that Part to enable those Subjects of the State who had migrated to Pakistan in 1947 in connection with the disturbances or in fear of the same, to return to the State under a permit for resettlement or permanent return issued under the authority of law that would be made by the State Legislature in due course.

The Committee is of the view that the State Legislature should also be competent to make provisions with respect to acquisition and termination of the status of permanent residents of the State and until the State Legislature enacts provisions in that behalf, the existing Ijazatnama Rules should continue to remain in force and the existing procedure for obtaining a State Subject Certificate should apply for the purpose of securing a certificate as to the status of a permanent resident.

Fundamental Rights

An examination of the Fundamental Rights embodied in the Constitutions of some of the more important countries of the world would reveal that while there are certain rights which require positive action by the State and which can be granted only so far as such action is practicable, there are others which require that the State shall abstain from prejudicial action. It is obvious that the rights of the first type are not normally either capable of or suitable for enforcement by legal action, while those of the second type may be so enforced. Both classes of rights are mentioned together under the head "Fundamental Rights" in certain Constitution but in certain others distinction between two forms of rights is clearly recognized. A similar distinction is recognized in Dr. Lauterpacht' "International Bill of Rights of Man" 1945. The Committee having carefully considered the matter is of the view that it would be useful to separate the two classes of rights ; firstly those rights which shall be enforceable in a Court of law and secondly those which shall be guaranteed by enjoining upon the State to take specified and planned action in the field of special and economic reconstruction of the State. This set of rights shall retain Fundamental position in the governmance of the State.

The question of evolving Fundamental Rights has been considered and discussed at length by the Committee. It has been recognised by the Government of India that the Fundamental Rights as contained in Part III of the Constitution of India, should not come in the way of Land Reforms already introduced by the State or the reforms that might be undertaken by the State in future. This was particularly necessary in view of the fact that

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the State has not provided for any compensation for the land expropriated under its Land Reforms. The Government of India has also recognised that the special rights and privileges enjoyed by the Permanent Residents of the State relating to acquisition and holding of immovable property and in respect of employment under the State shall be fully safeguarded.

The Committee having taken note of the Fundamental Rights provided in various Constitutions including the Constitution of India recommends the following rights for adoption by the State :

1. Equality of rights of all citizens, irrespective of religion, race, caste, sex, place of birth or any of them, all spheres – economic, political, cultural and social – should be guaranteed ; that is to say, every citizen should have the right to EQUALITY before law and there should be no discrimination against any citizen on grounds only of religion, race, caste, sex, or place of birth ; and no citizen should be subject to any disability, liability, restriction or condition with regard to –

(*a*) access to shops, public restaurants, hotels and places of public entertainment ; or

(*b*) the use of wells, tanks, bathing, Ghats, roads and places of public resort maintained wholly or partly out of State Funds or dedicated to the use of the general public.

2. The Committee strongly feels that women must attain their just and rightful place in society and their co-operation in the mighty and responsible task of nation-building must be secured. Similarly all children born in the State should be ensured equality of opportunity irrespective of accidents of birth and parentage. In order to achieve that end the State should be able to make any special provisions it deems fit for women and children.

3. Untouchability abolished and its practice in any form shall be forbidden.

4. In conformity with the interests of the people, all citizens shall have right to FREEDOM of speech and expression, to assemble peaceably and without arms, to form associations or unions, to move freely throughout the territory of the State, to reside and settle in any part of the territory of the State, to acquire, hold and dispose of property subject to the laws of the State and to practise any profession, or to carry on any occupation, trade or business.

The State should, however, have powers to impose such restrictions as are considered reasonable by the State Legislature on the exercise of these rights in the interests of general public, security of the State, public order, communal harmony, decency or morality, or in relation to contempt of Court, defamation, or incitement of an offence, or for the protection of the special rights and privileges of the permanent residents of the State.

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5. Protection in respect of conviction for offences, and of life and personal liberty shall also be afforded. The provisions and procedure pertaining to preventive detention should follow on the lines of the corresponding provisions in the Fundamental Rights of India.

6. All citizens shall have RIGHT AGAINST EXPLOITATION i.e., traffic in human beings and forced labour, employment of children in factories etc. shall be prohibited.

7. FREEDOM OF RELIGION shall be guaranteed i.e. all citizens shall have the freedom of conscience and shall be free of profess, practise, and propagate any reigion and to manage their respective religious affairs.

8. CULTURAL AND EDUCATIONAL RIGHTS should also be guaranteed by the Constitution. The interests of the minorities should be protected and any section of citizens having a distinct language, script or culture should have the right to conserve the same.

9. RIGHT TO PROPERTY shall be guaranteed, and no person shall be deprived of his property save by authority of law. This should not, however, in any way affect the existing laws relating to land reforms nor should it prevent the State Legislature to make any further land reforms. Accordingly no law, made by the State Legislature, providing for the acquisition by the State of any land or of any rights therein or for the extinguishment or modification of any such rights shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the aforesaid rights. The existing definition of land shall be preserved.

10. Similarly all these Fundamental Rights should be subject to the over-riding condition that :

(*i*) no law of the State relating to State Subjects to be hereafter called 'Permanent Residents' and regulating their rights and privileges ; and

(*ii*) no law hereafter to be made by the State Legislature defining the permanent residents and conferring on them special rights and privileges in relation to acquisition and holding of property in the State or in mater of employment under the State or as respects settlement in the State and imposing restrictions on citizens other than permanent residents for any of the aforesaid purposes should become void of the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Part III of Constitution of India.

11. The Committee feels that a declaration of Fundamental Rights would be more effective if suitable judicial remedies for the enforcement of these rights are provided and therefore it is proposed that the citizens shall have the right to Constitutional Remedies. In order to ensure the fullest protection in regard to enjoyment of these rights the citizens shall be allowed to seek redress from the highest Court *i.e.* the Supreme Court of India besides the State High Court.

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In order to avoid any possibility of conflict of the Fundamental Rights proposed above and those contained in Part III of the Constitution of India, the Committee feels that the former rights in so far as they very in certain respects the provisions of the Fundamental Rights of the Union should be reflected in Part III of the Constitution of India. The Government of India has already agreed to provide appropriate modifications or exceptions in Part III of the Constitution of India to to suit the requirements of the State.

As indicated above there should be separate set of principles which would be Fundamental in the governance of the State and shall be intended for the guidance of the State. The Committee recognises that in a democratic State every person must be provided with equal opportunities and adequate minimum of a civilised standard of life. To realize that ideal, however, the State must take resort to economic planning with a view to achieve all sided advance on a country wide scale. Similar other rights, for instance, the right to rest, the right to material security etc. can be ensured only when a stage of industrial development and economic prosperity, as envisaged in 'New Kashmir', is achieved. The Committee, therefore, proposes that the principles of policies set forth below should serve as guidance for the State for leading the people towards that end.

(I) The State shall within the limits of its economic capacity and development make effective provision for securing the right to work, that is, the right to receive guaranteed work with payment for their labour in accordance with its quantity and quality subject to a basic minimum and maximum wage established by law.

(II) The State shall endeavour to secure, by suitable legislation, economic organisation and in other ways, to all workers, industrial or otherwise, better conditions of work ensuring a decent standard of life, full enjoyment of leisure and cultural opportunities.

(III) The State shall make provision for securing just and humane conditions of work and for maternity relief for workers.

(IV) All permanent residents of the State shall have the right to material security in old age as well as in the event of sickness and loss of capacity to work.

This right shall be ensured by the wide development of social insurance of workers and employees at the expense of the State, free medical aid for workers and the provision of a wide network of health resorts for the use of working men and women.

(V) The State shall, in particular, direct its policy towards securing –

(*i*) that the permanent residents of the State, men and women equally, have the right to an adequate means of livelihood ;

(*ii*) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good ;

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(*iii*) that the operation of free competition shall not be allowed to result in the concentration of the ownership and control of essential commodities in few individuals to the common detriment ;

(*iv*) that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter vocations unsuited to their age and strength : and

(*v*) that childhood and youth are protected against moral and material abandonment.

(VI) Every permanent resident shall be entitled to free education, and it shall be the duty of the State to provide free education which shall be compulsory for all children upto the primary standard.

(VII) The State shall promote with special care the educational and economic interests of the socially and educationally backward sections of the people, and shall protect hem from social injustice and all forms of exploitations.

(VIII) The State shall foster and encourage the growth and development of State and regional languages, especially those which are more backward, by every possible means, including the following :

(*i*) the establishment of a State Languages Academy ; where scholars and grammarians shall work to develop these languages by –

(*a*) perfecting and providing their scripts ;

(*b*) enriching them through foreign translations ;

(*c*) studying their history ;

(*d*) compiling dictionaries and text books ;

(*ii*) founding of State scholarships for the study of these languages ;

(*iii*) fostering of local press and publications in local languages ; and

(*iv*) establishment of an Institute of Art and Culture.

IX. It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest declared by the law of the State to be of national importance, from spoilation, destruction, removal, disposal or export as the case may be, and to preserve and maintain according to the law of the State all such monuments or places or objects.

In the light of the foregoing the Committee recommends that :

(*i*) the Drafting Committee, set up by this House be directed to propose appropriate modifications or exceptions in Part II and Part III of the Constitutions of India in their application to the State of Jammu and Kashmir, in the light of the recommendations contained in this report ; and

(*ii*) that the Drafting Committee should, while preparing the Draft Constitution of the State incorporate therein the rights and principles indicated above.

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APPENDIX XXI

REPORT OF THE DRAFTING COMMITTEE OF FEBRUARY 11, 1954 ALONG WITH THE ANNEXURE TO THE REPORT

In pursuance of the directives contained in the Reports of the Basic Principles Committee and the Advisory Committee on Fundamental Rights and Citizenship, as adopted by the House on 6th February, 1954, the Drafting Committee has considered the question as to how best to give effect to the recommendations embodied in these Reports. The task which the Committee has to discharge requires action in the following directions :

(1) Preparation of the Draft Constitution of the State.

(2) Defining the sphere of Union Jurisdiction in the State and for that purpose suggesting the various provisions of the Constitution of India along with modifications and exceptions subject to which these provisions should apply to the State. These would include appropriate modifications and exceptions in Part II (Citizenship) and Part III (Fundamental Rights) in their application to the State of Jammu and Kashmir in the light of the recommendations contained in the report of the Advisory Committee on Citizenship and Fundamental Rights.

(3) Consequential amendments in the Jammu and Kashmir Constitution Act, 1996.

As for the preparation of the Draft Constitution for the State the Committee feels that in view of the importance and magnitude of the work involved, adequate time will be needed for the completion of this task and accordingly recommends that the same may be allowed.

The Annexure to this Report while reflecting the desire of the House for the ratification of the accession of the State with the Union of India, indicates in detail the provisions of the Constitution of India which generally correspond to Defence, Foreign Affairs and Communications and such other matters as are considered essential concomitants of the fact of accession. In accordance with the directions contained in the two reports, referred to above, the Committee has endeavoured to clearly demarcate the sphere of Union Jurisdiction keeping intact all along the residual powers of the State. While doing so the Committee has further provided adequate safeguards for preserving the basic policies of the State in respect of the land-reforms and the interests of the permanent residents of the State.

A Bill for the purpose of making consequential amendments in the Jammu and Kashmir Constitution Act, 1996, in the light of the Reports

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referred to in the opening paragraph of this Report will be drafted and presented to the House in due course.

Dated Jammu the
11th February, 1954

(Sd.) G.L. Dogra
" Mir Qasim
" D.P. Dhar
" Ghulam Rasul Renzu
" Harbans Singh Azad
Members Drafting Committee

ANNEXURE TO THE REPORT OF THE DRAFTING COMMITTEE

The provisions of the Constitution of India which, in addition to article and article 370, should apply in relation to the State of Jammu and Kashmir and the exceptions and modifications subject to which they should so apply will be as follows :

1. The Preamble.

2. Part I : To article 3, there shall be added the following further proviso, namely :

"Provided further that no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in Parliament without the consent of the Legislature of that State."

3. Part II : (*a*) This Part shall be deemed to have been applicable in relation to the State of Jammu and Kashmir as from the 26th day of January 1950.

(*b*) To article 7, there shall be added the following further proviso namely :

"Provided further that nothing in this article shall apply to a permanent resident of the State of Jammu and Kashmir who, after having so migrated to the territory now included in Pakistan, return to the territory of that State under a permit for resettlement in the State or permanent return issued by or under the authority of any law made by the Legislature of that State, and every such person shall be deemed to be a citizen of India."

4. Part III : (*a*) In article 13, the references to the commencement of the Constitution shall be construed as references to the commencement of this Order :

(*b*) In clause (4) of article 15, the reference to Scheduled Tribe shall be omitted.

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(*c*) In clause (3) of article 16 the reference to the State shall be construed as not included a reference to the State of Jammu and Kashmir.

(*d*) To article 19, there shall be added for a period of five years from the commencement of this Order and following clause, namely :

"(7) The words 'reasonable restrictions occurring in clause (2), (3), (4) and (5) shall be construed as meaning such restrictions as the appropriate Legislature deems reasonable."

(*e*) In clauses (4) and (7) of article 22 for the words "Parliament" the words "the Legislature of the State" shall be substituted,

(*f*) In article 31, clauses (3), (4) and (6) shall be omitted ; and for use (5), there shall be substituted the following clause, namely :

"(5) Nothing in clause (2) shall affect –

(*a*) the provisions of any existing law ; or

(*b*) the provisions of any law which the State may hereafter make –

(*i*) for the purpose of imposing or levying any tax or penalty ; or

(*ii*) for the promotion of public health or the prevention of danger to life or property ; or

(*iii*) with respect to property declared by law to be evacuce property ;"

(*g*) In article 31–A, for sub-clause (*a*) of clause (2), the following sub-clause shall be substitueted, namely ;

"(*a*) 'estate' shall mean land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes :

(*i*) sites of buildings and other structures on such land ;

(*ii*) trees standing on such land ;

(*iii*) forest land and wooded waste ;

(*iv*) area covered by or fields floating over water ;

(*v*) sites of *jandars* and *gharats* ;

(*vi*) any *jagir*, *inam*, *muafi* or *mukarrari* or other similar grant ; but does not include :

(*i*) the site of any building in any town or town area or village *abadi* or any land appurtenant to any such building or site ;

(*ii*) any land which is occupied as the site of a town or village ; or

(*iii*) any land reserved for building purposes in a municipality or notified area or cantonment or any area for which a town planning scheme is sanctioned."

(*h*) In article 32, clause (3) shall be omitted ; and after clause (2), following new clause shall be inserted, namely :

"(2A) Without prejudice to the powers conferred by clauses (1) and

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(2), the High Court shall have power throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority, including inappropriate cases any Government within those territories, directions or orders or writs, including writs in the nature of *habeas corpus, mandamus*, prohibition, *quo warranto* and *certiorari* or any of them, for the enforcement of any of the rights conferred by this part."

(i) In article 35 —

(*i*) references to the commencement of the Constitution shall be construed as references to the commencement of this Order ;

(*ii*) in clause (*a*) (*i*), the words, "clause (3) of the article 16, clause (3) of article 32" shall be omitted ; and

(*iii*) after clause (*b*), the following clause shall be added, namely :

"(*c*) Any law in force immediately before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, in the State of Jammu and Kashmir with respect to any of the matters referred to in clause (7) of article 22 shall continue in force until altered or repealed or amended by the Legislature of that State."

(*j*) After article 35, the following new article shall be added, namely :

"35A. Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State, :

(*a*) defining the classes of persons who are, or shall be, "permanent residents of the State of Jammu and Kashmir", or

(*b*) conferring on such permanent residents any special rights and privileges, or imposing upon other persons any restrictions, as respects :

(*i*) employment under the State Government ;

(*ii*) acquisition of immovable property in the State ;

(*iii*) settlement in the State ; or

(*iv*) right to scholarships and such other forms of aid as the State Government may provide,

shall be invalid on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part."

5. Part V : (*a*) In articles 54 and 55, the references to the elected members of the House of the People and to each such member shall include a reference to the representatives of the State of Jammu and Kashmir in that House ; and the population of the State shall be deemed to be forty-four lakhs and ten thousand.

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(*b*) In the proviso to clause (1) of article 73, the words "or in any law made by Parliament" shall be omitted.

(*c*) Article 81 shall apply subject to the modification that the representatives of the State in the House of the People shall be appointed by the President on the recommendation of the Legislature of the State.

(*d*) In article 134, clause (2), after the words, "Parliament may", the words "on the request of the Legislature of the State" shall be interested.

(*e*) Articles 135, 136 and 139 shall be omitted.

(*f*) In articles 149 and 150, references to the States shall be construed as not including the State of Jammu and Kashmir.

(*g*) In article 151, clause (2) shall be omitted.

6. Part XI : (*a*) In article 246, the wods "Notwithstanding anything in clauses (2) and (3)" occurring in clause (1), and clauses (2), (3) and (4) shall be omitted.

(*b*) Articles 248 and 249 shall be omitted.

(*c*) In article 250, for the words, "enumerated in the State List", the words "not enumerated in the Union List" shall be substituted.

(*d*) In article 251, for the words and figures "articles 249 and 250", the word and figures "article 250" shall be substituted and the words "under this Constitution" shall be omitted ; and for the words "under either of the said articles", the words "under the said article" shall be substituted.

(*e*) To article 253, the following proviso shall be added, namely :

"provided that after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, no decision affecting the disposition of the State of Jammu and Kashmir shall be made by the Government of India without the consent of the Government of that State."

(*f*) In article 254, the words, "or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provision of claseu (2)" and the words "or as the case may be, the existing law" occurring in clause (1) and the whole of clause (2) shall be omitted.

(*g*) Article 255 shall be omitted.

(*h*) Article 256 shall be renumbered as clause (1) of that article, and the following new clause shall be added thereto, namely :

"(2) The State of Jammu and Kashmir shall so exercise its executive power as to facilitate the discharge by the Union of its duties and responsibilities under the Constitution in relation to that State ; and in particular, the said State shall, if so required by the Union, acquire or

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requisition property on behalf and at the expense of the Union, or if the property belongs to the State, transfer it to the Union on such terms as may be agreed, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India."

(*i*) Article 259 shall be omitted.

(*j*) In clause (2) of Article 261, the words "made by Parliament" shall be omitted.

7. Part XII : (*a*) Clause (2) of article 267, article 273, clause (2) of article 283, articles 290 and 291 shall be omitted.

(*b*) In articles 266, 282, 284, 298, 299 and 300, references to the State or States shall be construed as not including references to the State of Jammu and Kashmir.

(*c*) In article 277, references to the commencement of the Constitution shall be construed as references to the commencement of this Order :

8. Part XIII : (*a*) In clause (1) of article 303, the words "by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule" shall be omitted.

(*b*) In article 306, references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

9. Part XIV : In article 308, after the words "First Schedule", the words "other than the State of Jammu and Kashmir" shall be added.

10. Part XV : (*a*) Article 324 shall apply only in so far as it relates to elections to Parliament and to the Offices of President and Vice-President.

(*b*) Articles 325, 326, 327, 328 and 329 shall be omitted.

11. Part XVI : (*a*) Articles 331, 332, 333, 336, 337, 339 and 342 shall be omitted.

(*b*) In article 330, references to the "Scheduled Tribes" shall be omitted.

(*c*) In articles 334 and 335 references to the State or States shall be construed as not including references to the State of Jammu and Kashmir.

12. Part XVII : The provisions of this Part shall apply only in so far as they relate to

(*i*) the official language of the Union ;

(*ii*) the official language for communication between one State and another, or between a State and the Union ; and

(*iii*) the language of the proceedings in the Supreme Court.

13. Part XVIII : (*a*) Articles 356, 257 and 360 shall be omitted.

(*b*) To article 352, the following new clause shall be added, namely :

"(4) No Proclamation of Emergency made on grounds only of internal

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disturbances or imminent danger thereof shall have effect in relation to the State of Jammu and Kashmir (except as respects article 354) unless it is made at the request of or with the concurrence of the Government of that State".

14. Part XIX : (*a*) In article 361, after clause (4), the following clause shall be added, namely :

"(5) The provisions of this article shall apply in relation to the Sadar-i-Riyasat of Jammu and Kashmir as they apply in relation to a Rajpramukh, but without prejudice to the provisions of the Constitution of that State".

(*b*) Articles 362 and 365 shall be omitted.

(*c*) In article 366, clause (21) shall be omitted.

(*d*) To article 367, there shall be added the following clause, namely :

"(4) For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir :

(*a*) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State ;

(*b*) references to the Government of the said State shall be construed as including references to the Sadar-i-Riyasat acting on the advice of his Council of Ministers ;

(*c*) references to the High Court of a State shall include references to the High Court of Jammu and Kashmir ;

(*d*) references to the Legislature or the Legislative Assembly of the said State shall be construed as including references to the Constituent Assembly of the said State ;

(*e*) references to the permanent residents of the said State shall be construed as meaning persons who, before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, were recognised as State subjects under the laws in force in the State or who are recognised by any law made by the State Legislature as permanent residents of the State ; and

(*f*) references to the Rajpramukh shall be construed as references to the person for the time being recognized by the President as the Sadar-i-Riyasat of the Jammu and Kashmir and as including references to any person for the time being recognized by the President as being competent to exercise the powers of the Sadar-i-Riyasat.

15. Part XX : To article 368, the following proviso shall be added, namely :

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"Provided further that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by order of the President under clause (1) of Article 370."

16. Part XXI : (*a*) Articles 369, 371, 373, clauses (1), (2), (3) and (5) of article 374 and articles 376 to 392 shall be omitted.

(*b*) In article 372 :

(*i*) clauses (2) and (3) shall be omitted.

(*ii*) references to the laws in force in the territory of India shall include references to *Hidayats, Ailans, Ishtihars*, circulars, *Robkars, Irshads, Yadashts,* State Council Resolutions, Resolutions of the Constituent Assembly, and other instruments having the force of law in the territory of the State of Jammu and Kashmir ; and

(*iii*) references to the commencement of the Constitution shall be construed as references to the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954.

(*c*) In clause (4) of article 374, the reference to the authority functioning as the Privy Council of a State shall be construed as a reference to the Advisory Board constituted under the Jammu and Kashmir Constitution. Act, 1996, and references to the commencement of this Constitution shall be construed as references to the commencement of this order.

17. Part XXII : Articles 394 and 395 shall be omitted.

18. First Schedule

19. Second Schedule : Paragraph 6 shall be omitted.

20. Third Schedule : Forms V, VI, VII and VIII shall be omitted.

21. Fourth Schedule.

22. Seventh Schedule : (*a*) In the Union List :

(*i*) for entry 3, the entry "3, Administration of cantonments" shall be substituted ;

(*ii*) entries 8, 9, 33 and 34, the words "trading corporations including" in entry 43, entries 44, 50, 52, 54, 55, 60, 67, 69, 78 and 79, the words "inter-State migration" in entry 81, and entry 97 shall be omitted.

(*iii*) for entry 53, the entry "53. Petroleum and Petroleum Products, but excluding the regulation and development of olive oil and mineral oil resources ; other liquids and substances declared by Parliament by law to be dangerously inflammable" shall be substituted ; and

(*iv*) in entries 72 and 76, the reference to the States shall be construed as not including a reference to the State of Jammu and Kashmir.

(*b*) The State list and the Concurrent list shall be omitted.

23. Eighth Schedule

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24. Ninth Schedule : After entry 13, the following entries shall be added namely :

14. The Jammu and Kashmir Big Landed Estates Abolition Act (No. XVII) of 2007.

15. The Jammu and Kashmir Restitution of Mortgaged Properties Act. (No. XVI of 2006).

16. The Jammu and Kashmir Tenancy Act (No. II of 1980).

17. The Jammu and Kashmir Distressed Debtors Relief Act (No. XVII of 2006).

18. The Jammu and Kashmir Alienation of Land Act (No. V of 1995)

19. Order No. 6-H of 1951 dated 10-3-1951 regarding resumption of Jagirs and other assignments of Land Revenue etc.

20. The Jammu and Kashmir State Kuth Act (No. I 1978)."

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APPENDIX XXII

THE CONSTITUTION (APPLICATION TO JAMMU AND KASHMIR) ORDER, 1954

In exercise of the powers conferred by clause (1) of article 370 of the Constitution, the President, with the concurrence of the Government of the State of Jammu and Kashmir, is pleased to make the following Order :

1. (1) This Order may be called the Constitution (Application to Jammu and Kashmir) Order, 1954.

(2) It shall come into force on the fourteenth day of May, 1954, and shall thereupon supersede the Constitution (Application to Jammu and Kashmir) Order, 1950.

2. The provisions of the Constitution which in addition to article 1 and article 370, shall apply in relation to be the State of Jammu and Kashmir and the exceptions and modifications subject to which they shall so apply shall be as follows :

1. The Preamble.

2. Part I : To article 3, there shall be added the following further proviso namely :

"Provided further that no Bill providing for increasing or diminishing the area of the State of Jammu and Kashmir or altering the name or boundary of that State shall be introduced in Parliament without the consent of the Legislature of that State".

3. Part II : (*a*) This part shall be deemed to have been applicable in relation to the State of Jammu and Kashmir as from the 26th day of January, 1950.

(*b*) To article 7, there shall be added the following further proviso namely :

"Provided further that nothing in this article shall apply to a permanent resident of the State of Jammu and Kashmir who, after having so migrated to the territory now included in Pakistan, returns to the territory of that State under a permit for resettlement in that State or permanent return issued by or under the authority of any law made by the Legislature of that State, and every such person shall be deemed to be a citizen of India".

4. Part III : (*a*) In article 13, references to the commencement of the Constitution shall be construed as reference to the commencement of this Order.

(*b*) In clause (4) of article 15, the reference to Schedule Tribes shall be omitted.

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(*c*) In clause (3) of article 16, the reference to the State shall be construed as not including a reference to the State of Jammu and Kashmir.

(*d*) In article 19, for a period of five years from the commencement of this order :

(*i*) in clause (3) and (4), after the words "in the interests of" the words "the security of the State or" shall be inserted ;

(*ii*) in clause (5) for the words "or for protection of the interests of any Scheduled Tribes" the words "or in the interests of the security of the State" shall be substituted ; and

(*iii*) the following new clause shall be added, namely ;

(7) The words "reasonable restrictions" occurring in clause (2), (3), (4) and (5) shall be construed as meaning such restrictions as the appropriate Legislature deems reasonable.'

(*e*) In clauses (4) and (7) of article 22, for the word "Parliament", the words "the Legislature of the State" shall be substituted.

(*f*) In article 31, clauses (3), (4) and (6) shall be omitted ; and for clause (5), there shal be substituted the following clause, namely :

"5 Nothing in clause (2) shall effect :

(*a*) the provisions of any existing law ; or

(*b*) the provisions of any law which the State may hereafter make :

(*i*) for the purpose of imposing or levying any tax or penalty ; or

(*ii*) for the promotion of public health or the prevention of danger to life or property ; or

(*iii*) with respect to property declared by law to be evacuee property".

(*g*) In article 31-A, the proviso to clause (1), shall be omitted ; and for sub-clause (*a*) of clause (2), the following sub-clause shall be substituted, namely :

(*a*) "eState" shall mean land which is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for posture, and includes :

(*i*) sites of buildings and other structures on such land ;

(*ii*) trees standing on such land ;

(*iii*) forest land and wooded waste ;

(*iv*) area covered by or fields floating over water ;

(*v*) sites of jandars and gharats ;

(*vi*) any jagir, inam, muafi or mukarrari or other similar grant ; but does not include :

(*i*) the site of any building in any town or town area or village abadi or any land appurtenant to any such building or site ;

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(*ii*) any land which is occupied as the site of a town or village ; or

(*iii*) any land reserved for building purposes in a municipality or notified area or cantonment or town area or any area for which a town planning scheme is sanctioned".

(*h*) In article 32, clause (3) shall be omitted ; and after clause (2), the following new clause shall be inserted, namely :

"(2-A) Without prejudice to the powers conferred by clauses (1) and (2), the, High Court shall have power through out territories in relation to which it exercised jurisdiction to issue to any person or authority, including in appropriate cases any Government within those territories, directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by this Part.

(*i*) In article 35 :

(*i*) references to the commencement of the Constitution shall be construed as reference to the commencement of this Order ;

(*ii*) in clause (*a*) (*i*), the words, figures, and brackets "clause (3) of article 16, clause (3) of article 32" shall be omitted ; and

(*iii*) after clause (*b*), the following clause shall be added namely :

"(*c*) no law with respect to preventive detention made by the Legislature of the State of Jammu and Kashmir, whether before of after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be void on the ground that it is inconsistent, with any of the provisions of this part, but any such law shall, to the extent of suh inconsistency, cease to have effect on the expiration of five years from the commencement of the said Order, except as respects things done or omitted to be done before the expiration thereof".

(*j*) After article 35, the following new article shall be added namely :

"35-A. Saving of laws with respect to permanent residents and their right : Notwithstanding anything contained in this Constitution, no existing law in force in the State of Jammu and Kashmir, and no law hereafter enacted by the Legislature of the State,

(*a*) defining the clases of persons who are, or shall be, permanent residents of the State of Jammu and Kashmir ; or

(*b*) conferring on such permanent residents any special rights and privileges or imposing upon other persons any restrictions, as respects :

(*i*) employment under the State Government ;

(*ii*) acquisition of immovable property in the State ;

(*iii*) settlement in the State ; or

(*iv*) right to scholarships and such other forms of aid as the State Government may provide,

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shall be void on the ground that it is inconsistent with or takes away or abridges any rights conferred on the other citizens of India by any provision of this Part".

5. Part V : (*a*) In article 54 and 55, references to the elected members of the House of the people and to each such member shall include references to the representatives of the State of Jammu and Kashmir in that House ; and the population of the State shall be deemed to be forty-four lakhs and ten thousand.

(*b*) In the proviso to clause (1) of article 73, the words "or in any law made by Parliament" shall be omitted.

(*c*) Article 81 shall apply subject to the modification that the representatives of the State in the House of the people shall be appointed by the President on the recommendation of the Legislature of the State.

(*d*) In article 134, clause (2), after the words "Parliament may", the words "on the request of the Legislature of the State" shall be inserted.

(*e*) Articles 135, 136 and 139 shall be omitted.

(*f*) In articles 149 and 150, references to the States shall be construed as not including the State of Jammu and Kashmir.

(*g*) In article 151, clause (2) shall be omitted.

6. Part XI : (*a*) In article 246, the words, brackets and figures "Notwithstanding anything in clauses (2) and (3)" occurring in clause (1), and clauses (2), (3) and (4) shall be omitted.

(*b*) Articles 248 and 249 shall be omitted.

(*c*) In article 250, for the words "to any of the matters enumerated in the State List", the words "also to matters not enumerated in the Union List" shall be substituted.

(*d*) In article 251, for the words and figures, "articles 249 an 250", the word and figures "article 250" shall be substituted, and the words "under this Constitution" shall be omitted ; and for the words "under either of the said articles", the words "under the said article" shall be substituted.

(*e*) To article 253, the following proviso shall be added, namely :

"Provided that after the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954, no decision affecting the disposition of the State of Jammu and Kashmir shall be made by the Government of India without the consent of the Government of that State".

(*f*) In article 254, the words, brackets and figure "or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2)" and the words "or as the case may be, the existing law", occurring in clause (1), and the whole of clause (2) shall be omitted.

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(*g*) Article 255 shall be omitted.

(*h*) Article 256 shall be renumbered as clause (1) of that article, and the following new clause shall be added thereto, namely :

"(2) The State of Jammu and Kashmir shall so exercise its executive power as to facilitate the discharge by the Union of its duties and responsibilities under the Constitution in relation to that State ; and in particular, the said State shall, if so required by the Union, acquire or requisition property in behalf and at the expense of the Union, or if the property belongs to the State, transfer it to the Union on such terms as may be agreed, or in default of agreement, as may be determined by an arbitrator appointed by the Chief Justice of India".

(*i*) Aricle 259 shall be omitted.

(*j*) In clause (2) of Article 261, the words "made by Parliament" shall be omitted.

7. Part XII : (*a*) Clause (2) of article 267, article 273, clause (2) of article 283, articles 290 and 291 shall be omitted.

(*b*) In articles 266, 282, 284, 298, 299 and 300, references to the State or States shall be construed as not including references to the State of Jammu and Kashmir.

(*c*) In articles 277 and 295, references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

8. Part XIII : (*a*) In clause (1) of article 303, the words "by virtue of any entry relating to trade and commence in any of the Lists in Seventh Schedule" shall be omitted.

(*b*) In article 306, references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

9. Part XIV : In article 308, after the words "First Schedule", the words "other than the State of Jammu and Kashmir" shall be added.

10. Part XV : (*a*) Article 324 shall apply only in so far as it relates to elections to Parliament and to the offices of President and Vice-President.

(*b*) Articles 235, 326, 327, 328 and 329 shall be omitted.

11. Part XVI : (*a*) In article 330, references to the "Schedule Tribes" shall be omitted.

(*b*) Articles 331, 332, 333, 336, 337, 339 and 342 shall be omitted.

(*c*) In articles 334 and 335 references to the State or States shall be construed as not including references to the State of Jammu and Kashmir.

12. Part XVII : The provisions of this Part shall apply only in so far as they relates to :

(*i*) the official language of the Union :

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(*ii*) the official language for communication between one State and another, or between a State and the Union ; and

(*iii*) the language of the proceedings in the Supreme Court.

13. Part XVIII : (*a*) To article 352, the following new clause shall be added, namely :

"(4) No Proclamation of Emergency made on grounds only of internal disturbance or imminent danger thereof shall have effect in relation to the State of Jammu and Kashmir (except as respects article 354) unless it is made at the request or with the concurrence of Government of that State".

(*b*) Articles 356, 357 and 360 shall be omitted..

14. Part XIX : (*a*) In article 361, after clause (4), the following shall be added, namely :

"(5) The provisions of this article shall apply in relation to the Sadar-i-Riyasat of Jammu and Kashmir as they apply in relation to a Rajpramukh, but without prejudice to the provisions of the Constitution of that State".

(*b*) Articles 362 and 365 shall be omitted.

(*c*) In article 366, clause (21) shall be omitted.

(*d*) To article 367, there shall be added, the following clause namely :

"(4) For the purposes of this Constitution as it applies in relation to the State of Jammu and Kashmir :

(*a*) references to this Constitution or to the provisions thereof shall be construed as references to the Constitution or the provisions thereof as applied in relation to the said State ;

(*b*) references to the Government of the said State shall be construed as including references to the Sadar-i-Riyasat acting on the advice of his Council of Ministers ;

(*c*) references to a High Court shall include references to the High Court of Jammu and Kashmir ;

(*d*) references to the Legislature or the Legislative Assembly of the said State shall be construed as including references to the Constituent Assembly of the said State ;

(*e*) references to the permanent residents of the said State shall be construed as meaning persons who, before the commencements of the Constitution (Application of Jammu and Kashmir) Order, 1954, were recognized as State subjects under the law in force in the State or who are recognised by any law made by the Legislature of the State as permanent residents of the State ; and

(*f*) references to the Rajpramukh shall be construed as references to the persons for the time being recognised by the President as the Sadar-i-Riyasat of Jammu and Kashmir and as including references to any person

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for the time being recognised by the President as being competent to exercise the powers of the Sarar-i-Riyasat".

15. Part XX : To article 368, the following proviso shall be added, namely :

"Provided further that no such amendment shall have effect in relation to the State of Jammu and Kashmir unless applied by order of the President under clauses (1) of Article 370".

16. Part XXI : (*a*) Articles 369, 371, 373, clauses (1), (2), (3) and (5) of article 374 and articles 376 to 392 shall be omitted.

(*b*) In article 372 :

(*i*) clauses (2) and (3) shall be omitted.

(*ii*) references to the laws in force in the territory of India shall include references to Hidayats, Ailans, Ishtihars, circulars, Robkars, Irshads, Yadashts, State Council Resolutions, Resolutions of the Constitution Assembly, and other instruments having the force of law in the territory of the State of Jammu and Kashmir ; and

(*iii*) references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

(*c*) In clause (4) of article 374, the reference to the authority functioning as the Privy Council of a State shall be construed as a reference to the Advisory Board constituted under the Jammu and Kashmir Constitution Act, 1996, and references to the commencement of the Constitution shall be construed as references to the commencement of this Order.

17. Part XXII : Articles 394 and 395 shall be omitted.

18. First Schedule.

19. Second Schedule : Paragraph 6 shall be omitted.

20. Third Schedule : Forms V, VI, VII & VIII shall be omitted.

21. Fourth Schedule.

22. Seventh Schedule :

(*a*) In the Union List :

(*i*) for entry 3, the entry "3. Administration of cantonments" shall be substituted ;

(*ii*) entries 8, 9, 33 and 34, the words "trading corporations including" in entry 43, entries 44, 50, 52, 54, 55, 60, 67, 69, 78 and 79, the words "inter-State migration" in entry 81, and entry 97 shall be omitted ;

(*iii*) for entry 53, the entry "53 Petroleum and Petroleum products, but excluding the regulation and development of oil-fields and mineral oil resources ; other liquids and substances declared by Parliament by law to be dangerously inflammable" shall be substituted ; and

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(*iv*) in entries 72 and 76, the reference to the State shall be construed as not including a reference to the State of Jammu and Kashmir.

(*b*) The State list and the Concurrent list shall be omitted.

23. Eighth Schedule.

24. Nineth Schedule : After entry 13, the following entries shall be added, namely :

"14. The Jammu and Kashmir Big Landed EStates Abolition Act (No. XVII of 2007).

15. The Jammu & Kashmir Restitution of Mortagaged properties Act (No. XVI of 2006)

16. The Jammu & Kashmir Tenancy Act (No. II of 1980).

17. The Jammu & Kashmir Distressed Debators Relief Act (No. XVII of 2006)

The Jammu & Kashmir Alienation of Land Act (No. V of 1995)

19. Order No. 6H of 1951 dated 10th March, 1951 regarding assumption of Jagirs and other assignments of Land Revenue etc.

20. The Jammu & Kashmir State Kuth Act (No. I of 1978).

(Sd/-) Rajinder Prashad President

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APPENDIX XXIII

THE CONSTITUTION (AMENDMENT TO JAMMU AND KASHMIR) BILL, 2011 i.e. 1954

ACT XLVII OF 2011

A Bill further to amend the Jammu and Kashmir Constitution Act of 1996.

Be it enacted by the Constituent Assembly as follows :

1. Short title and commencement : (1) This Act may be called the Jammu and Kashmir Constitution (Amendment) Act, 2011.

(2) Except as hereinafter provided, the provisions of this Act shall be deemed to have come into force from 14th May, 1954.

2. Insertion of new part after section 5 : After section 5 of the Jammu and Kashmir Constitution Act, 1996 (hereinafter referred to as, "the said Act") the following new part shall be inserted namely :

PART I (A)
PERMANENT RESIDENTS

5-A. Every person who is or is deemed to be a citizen of India under the provisions of Part II of the Constitution of India as applied to the State of Jammu and Kashmir under the Constitution (Application to Jammu and Kashmir) Order, 1954, shall be a permanent resident of the State of Jammu and Kashmir if at the date of commencement of the Jammu and Kashmir Constitution (Amendment) Act, 2011, namely the 14th May, 1954 ;

(*a*) he was a State Subject of Class II as defined in the State Subject Notification No. I-L/84 dated : 20th April, 1927 read with Notification No. 13/L dated : 27th June, 1932, or

(*b*) after having acquired immovable property in the Jammu and Kashmir State in pursurance of an Ijazatnama granted under the Ijazatnama Rules for the time being in force, he has been ordinarily resident in the territory of the State for not less than ten years prior to the date of such commencement.

Explanation : All persons who before the commencement of the Constitution (Application to Jammu and Kashmir) Order, 1954 were State Subjects of Class I or Class II as defined in the State Subject Notification No. I-L/84 Dated : 20th April, 1927, read with Notification No. 13/L dated : 27th June, 1932, and who having migrated after the first day of March, 1947, to the territory now included in Pakistan return to the State under a permit for resettlement in the State or permanent return issued by or under

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the authority of any law made by the State Legislature shall continue to be deemed permanent residents of the State.

Status of permanent residentship of certain juristic persons : 5-B, Notwithstanding anything contained in the foregoing provisions of this Act every Company, which immediately before the commencement of the Constitution (Application to Jammu to Kashmir) Order, 1954, was recognised to be a State Subject within the meaning of the State Subject Notification No. I-L/84 dated : 20th April, 1927 shall be deemed to be a permanent resident at such commencement.

Explanation : In this section "Company" shall have meaning assigned to it in the Jammu and Kashmir Companies Act, 1927.

Continuance of the Status of permanent residentship : 5-C. Every person who is or who is deemed to be a permanent resident of the State of Jammu and Kashmir shall subject to the provisions of any law that may be made by the State Legislature, continue to be such permanent resident.

State Legislature to define and regulate the rights of permanent residents by 2/3rd majority : 5-D. The power of the State Legislature to define the term permanent resident of the State and to regulate their special rights and privileges shall be exerciseable only by a majority of not less than two thirds of the total membership of the Legislative Assembly.

State Legislature to make laws respecting the acquisition of the status of permanent resident : 5-E. Nothing contained in the forgoing provisions shall derogate from the power of the State Legislature to make such laws as it thinks fit with respect to the acquisition of the status of the permanent residents and until the State Legislature enacts provisions in that behalf the existing Ijazatnama Rules shall continue to remain in force and the existing procedure for obtaining a State Subject Certificate shall be followed for the purpose of securing the certificate of being a permanent resident of the State.

References to the term State subject : 5-F. Unless the context otherwise requires all references in the existing laws of the State to the expression "State Subject" shall be construed shall as references to the permanent residents of the State.

3. Amendment of section 23, Act XIV of 1996 : In section 23 of the said Act for the words "State Subject" the words "permanent residents of the State" shall be substituted.

Amendment of section 29 Act XIV of 1996 : Section 29 of the said Act shall be numbered as sub-section (1) of the said section and after sub-section (I) as so renumbered the following sub-section shall be added, namely :

Powers, privileges and immunities of the Legislative Assembly and its members and Committees : (2) In other respects, the powers

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privileges and immunities of the Legislative Assembly and of the Legislative Assembly and of the members and the Committees thereof shall be such as may from time to time be defined by law and until so defined shall be those of the Parliament of India and its Members and Committees".

5. Amendment of section 31, Act XIV of 1996 : In sub-section (3) of section 31 of the said Act for the words "then become an Act and have the force of law" the words "become an Act and have the force of law as soon as it is published in either of the aforesaid languages" shall be substituted.

6. Amendment of section 37, Act XIV of 1996 : In section 37 of the said Act for the words "any member of Board Judicial Advisors" the words "any Judge of the Supreme Court of India" shall be substituted.

7. Amendment of section 43, Act XIV of 1996 : In section 43 the said Act :

(*i*) in clause (*c*) the words "and the members of Board of Judicial Advisors" shall be deleted ; and

(*ii*) after clause (*d*) the following new clause shall be inserted, namely :

"(*dd*) The salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly".

8. Amendment of section 54, Act XIV of 1996 : In section 54 of the said Act for the words "Coat of arms" the words "State emblem" shall be substituted.

9. Amendment of section 56, Act XIV of 1996 : (i) In sub-section (2) of section 56 of the said Act, for the words "Rupees ten thousand" the words "Rupees twenty thousand" shall be substituted.

(*iii*) This section shall come into force from the date of publication of this Act in the Government Gazette.

10. Omission of section 62, Act XIV of 1996 : Section 62 of the said Act shall be omitted.

11. Insertion of new section after section 62, Act XIV of 1996 : After section 62 of the said Act, the following new section shall be inserted, namely :

"62-A. If the High Court is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of this Act or the Constitution of India as applied to the State by the Constitution (Application to Jammu and Kashmir) Order, 1954, the determination of which is necessary for the disposal of the case, it shall withdraw the case and may :

(*a*) either dispose of the case itself ; or

(*b*) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its

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judgment on such question and the said Court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

12. Insertion of new section 66-A., Act XIV of 1996 : After section 66 of the said Act the following new section shall be inserted, namely :

"66-A. If at any time it appears to the Council that a question of law or fact has arisen, or is likely to arise, which is of such a nature and of such pubic importance that it is expedient to obtain the opinion of the High Court upon it, it may refer the question to that Court for consideration and the Court may, after such hearing as it thinks fit, report to the Council its opinion thereon".

13. Omission of section 71, Act XIV of 1996 : Section 71 of the said Act shall be omitted.

14. Omission of section 75, Act XIV of 1996 : Section 75 of the said Act shall be omitted.

15. Insertion of new section 76-A, act XIV of 1996 : After section 76 of the said Act the following new section shall be inserted, namely :

"Savings as regards Letters Patent : 76-A. The provisions of the Letters Patent granted to the High Court on 28th May, 1948 shall continue to remain in force except in so far as these are inconsistent with the provisions of this Act or of any other law for the time being in force".

16. Amendment of Schedule I-A, Act XIV of 1996 : In form "C" of Schedule I-A of the said Act the words "for the members of the Board of Judicial Advisors and" occurring in the long title and the words "President/ a member of the Board of Judicial Advisors", in the text of the oath, shall be omitted.

17. Amendment of Schedule III, Act XIV of 1996 : For the third part of Schedule III of the said Act the following shall be substituted, namely :

(*i*) Such allowances as are admissible to the members of the Constituent Assembly.

(*ii*) This provision shall be deemed to have come into force from Ist April, 1955.

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APPENDIX XXIV

DRAFT CONSTITUTION ALONG WITH TWO NOTES OF DISSCENT

To,

The Hon'ble President,
Constituent Assembly,
Srinagar.

Sir,

On behalf of the Drafting committee, appointed by the Resolution of the Constituent Assembly dated 20th October, 1953, I submit herewith the Draft of the Constitution of the Jammu and Kashmir State, the settled by the Committee.

In preparing the Draft, the Committee has endeavoured to incorporate in it as far as possible the directives contained in the Reports of the Basic Principles Committee and the Advisory Committee on Fundamental Rights and Citizenship, as adopted by the Constituent Assembly on 6th February 1954, and such other decisions as were taken by the Assembly from time to time.

The Committee, however, ventures to suggest that the provisions in Part VII, relating to the Judiciary, which are in accordance with the directives contained in the Basic Principles Committee's Report in this behalf may be altered to the extent that the power of appointment and removal of High Court Judges be vested in the President. In the opinion of the Committee this procedure would inspire people with greater confidence in its independence and impartiality.

With regard to Chapter on Legislature, the Drafting Committee has envisaged the creation of the Legislative Council. It is suggested that consideration may be given to the desirability of ensuring representation in it of all the weaker sections including the Sikhs.

Yours faithfully,
(G.L. Dogra)
Chairman,
Drafting Committee.

Srinagar,
9th October, 1956.

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JAMMU AND KASHMIR CONSTITUENT ASSEMBLY
NOTE OF DISSENT BY S. HARBANS SINGH AZAD

I append a Note of dissent to the Draft Constitution on the following points :

1. I had recommended to the Drafting Committee to make provision for reservation of seats for Sikhs, for a specified period, in the Legislative Assembly. This I did in the light of the recommendation of the B.P.C. contained in para 8 of the said report :

"Provision will have to be made for a fixed period to promote with special care the interests of weaker sections of the people by ensuring their representation in the Assembly. But the majority of the members of the Committee opine that reservation of seats for Sikhs will not be in keeping with the democratic structure of our Draft Constitution."

I recommend that at least a specified number of seats, at least one from each Provinoe of Jammu and Kashmir be reserved for Sikhs.

Clauses 53 will have to be amended as follows :

Add one more provision to clause 53-sub-clause –2

"Provided further at of the members so elected at least one shall be a Sikh who is a resident of Kashmir Province.

Add further proviso to sub-clause 3 of clause 53 :

"provided further that of the members so elected at least one shall be a Sikh who is a resident of Jammu Province."

2. The composition of the Legislative Council should be more democratized. The number of members elected by the Assembly to reduced and that of members elected by direct votes and democratic institution be correspondingly increased. The total membership of the Council, if agreed to be created, should not exceed thirty.

3. It would be more desirabable to specify the "socially and economically backward classes of the State so that their representation in the Legislature is ensured in a precise manner.

I commend these points for the consideration of the Assembly.

P.L. Gupta
Secretary

Srinagar
10th October, 1956.

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NOTE OF DISSENT IN RESEPCT OF SECTION 50 OF THE DREAFT CONSTITUTION

1. The Legislative Council shall consist of thirty members, chosen in the manner provided in this section.

2. Substitute "ten" for "eleven".

3. Substitute "ten" for "eleven".

4. Will stand as in the Draft.

5. Two members shall be elected by the members of Panchayats of the Kashmir Province and two members by the members of Panchayats of the Jammu Province and two more members shall be nominated by the Sadar-i-Riyasat for a period of ten years from among the minority communities, one from the Kashmir Province and the other from the Jammu Province.

Note : Items Nos. 2 and 3 should contain mandatory provisions for electing two members from backward classes from each of the two Provinces.

Ghulam Nabi Lolabi
Member Constituent Assembly.

JAMMU AND KASHMIR CONSTITUENT ASSEMBLY
DRAFT CONSTITUTION OF JAMMU AND KASHMIR
(As introduced in Constituent Assembly)

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THE CONSTITUTION OF JAMMMU AND KASHMIR

We, the people of the State of Jammu and Kashmir, having solemnly resolved, in pursuance of the accession of this State to India which took place on the twenty-sixth day of October, 1947, to further define the existing relationship of the State with the Union of India as an integral part thereof, and to secure ourselves.

Justice, social, economic and political ;

Liberty of thought, expression, belief, faith and worship ;

Equality of status and of opportunity ; and to promote among them all.

Fraternity assuring the dignity of the individual and the unity of the Nation;

In our Constituent Assembly this—day of—1956, to Hereby Adopt, Enact and give to ourselves this Constitution.

PART I
PRELIMINARY

Short title and commencement :

1. (1) This Constitution may be called the Constitution of Jammu and Kashmir.

(2) It shall come into force on the—day of 1956.

Definitions :

2. (1) In this Constitution, unless the context otherwise requires :

(*a*) "Constitution of India" means the Constitution of India as applicable in relation to this State ;

(*b*) "existing law" means any law, Ordinance, order, bye-law, rule, notification or regulation passed, made or issued before the commencement of this Constitution by the Legislature or other competent authority or person having power to pass, make or issue such law, Ordinance, or bye-law, rule, notification or regulation ;

(*c*) "part" means a part of this Constitution ;

(*d*) "schedule" means a Schedule to this Constitution ; and

(*e*) "taxation" includes the imposition of any tax or impact, whether general or local or special, and "tax" shall be construed accordingly.

(2) Any reference in this Constitution to Acts or laws of the State Legislature shall be construed as including a reference to an Ordinance made by the Sadar-i-Riyasat.

PART II
THE STATE

Relationship of the State with the Union of India :

3. The State of Jammu and Kashmir is and shall be an integral part of the Union of India.

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Territory of the State :

4. The territory of the State shall comprise all the territories which on the fifteenth day of August, 1947, were under sovereignty or suzerainty of the Ruler of the State.

Extent of executive and Legislative power of the State :

5. The executive and Legislative power of the State extend to all matters except those with respect to which Parliament has power to make laws for the State under the provisions of the Constitution of India.

PART III
PERMANENT RESIDENTS

Permanent residents :

6. (1) Every person who is, or is deemed to be, a citizen of India under the provisions of the Constitution of India shall be a permanent resident of the State, if one the fourteenth day of May, 1954 :

(*a*) he was a State Subject of Class I or of Class II ; or

(*b*) having lawfully acquired immovable property in the State, he has been ordinarily resident in the State for not less than ten years prior to that date.

(2) Any person who, before the fourteenth day of May, 19 – " was a State Subject of Class I or of Class II and who, having migrated after the first day of March, 1947, to the territory or included in Pakistan, returns to the State under a permit for resettlement in the State or for permanent return issued by or under the authority of any law made by the State Legislature shall on such return be a permanent resident of the State.

(3) In this section, the expression "State Subject of Class I or Class II" shall have the same meaning as in the State Notification No. I-L/84 dated the twentieth April, 1927, read with Notification No. 13/L dated the twenty-seventh June, 1932.

Construction of references to State Subjects in existing laws :

7. Unless the context otherwise requires, all references in any existing law to hereditary State Subjects or to State Subjects of Class I or of Class II or of Class III shall be construed as references to permanent residents of the State.

Legislature to define permanent residents :

8. Nothing in the foregoing provisions of this Part shall derogate from the power of the State Legislature to make law defining the classes of persons who are, or shall be, permanent residents of the State.

Special provision for Bills relating to permanent residents :

9. A Bill making provision for any of the following matters, namely :

(*a*) defining or altering the definition of, the classes of persons who are, or shall be, permanent residents of the State ;

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(*b*) conferring on permanent residents any special rights or privileges;

(*c*) regulating or modifying any special rights or privileges enjoyed by permanent residents,

shall be deemed to be passed by either House of the Legislature only if it is passed by a majority of not less than two-thirds of the total membership of that House.

Rights of the permanent residents :

10. The permanent residents of the State shall have all the rights guaranteed to them under the Constitution of India.

PART IV
DIRECTIVE PRINCIPLES OF STATE POLICY

11. In this Part, unless the context otherwise requires, the State includes the Government and the Legislature of the State and all local or other authorities within the territory of the State or under the control of the Government of the State.

12. The provisions contained in this Part shall not be enforceable by any Court, but the principles therein laid down are nevertheless Fundamental in the goverance of the State and it shall be the duty of the State to apply these principles in making laws.

13. The prime object of the State consistent with the idea and objectives of the freedom movement envisaged in 'New Kashmir' shall be the promotion of the welfare of the mass of the people by establishing and preserving a socialist order of society wherein all exploitation of man has been abolished and wherein justice – social, economic and political – shall inform all the institution of national life.

14. Consistently with the objectives outlined in the foregoing section the State shall develop in a planned manner the productive forces of the country with a view to enriching the material and cultural life of the people and foster and protect.

(*a*) the public Sector where the means of production are owned by the State ;

(*b*) the Co-operative Sector where the means of production are co-operatively owned by individuals or groups of individuals ; and

(*c*) the private Sector where the means of production are owned by an individual or a corporation employing labour ; provided that the operation of this sector is not allowed to result in the concentration of wealth or of the means of production to the common detriment.

15. The State shall endeavour to organize and develop agriculture and animal husbandry by brining to the aid of the cultivator the benefits of modern and scientific research and techniques so as to ensure a speedy improvement in the standard of living as also the prosperity of the rural masses.

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16. The State shall take steps to organise village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self Government.

17. The State shall, in order to rehabilitator, guide and promote the renowned crafts and cottage industries of the State, initiate and execute well considered programmes for refining and modernizing techniques and modes of production, including the employment of cheap power so that unnecessary drudgery and toil of the workers are eliminated and the artistic value of the products enhanced, while the fullest scope is provided for the encouragement and development of individual talent and initiative.

18. The State shall take steps to separate the Judiciary from the executive in the public services, and shall seek to secure a judicial system which is humane, cheap, certain objective and impartial whereby justice shall be done and shall be seen to be done and shall further strive to ensure efficiency, impartiality and incorruptibility of its various organs of justice, administration and public utility.

19. The State shall within the limits of its economic capacity and development make effective provision for securing to all permanent residents, men and women, on the basis of complete equality :

(*a*) the right to work – that is, the right to receive guaranteed work with payment for labour in accordance with its quantity and quality subject to a basic minimum and maximum wage established by law :

(*b*) reasonable, just and humane conditions of work assuring full enjoyment of leisure and cultural opportunities ;

(*c*) maintenance in old age as well as in the event of sickness, disablement, unemployment and other cases of undeserved want, by providing social insurance, medical aid, hospitals, sanatoria and health resorts at State expense for all working men and women ;

(*d*) protection for the strength and health of workers, men and women, and the tender age of children from being abused and for persons from being forced by economic necessity to enter a vocations unsuited to their sex, age or strength.

20. The State shall endeavour :

(*i*) to secure to every permanent resident the right to free education upto the University standard ;

(*ii*) to provide, within a period of ten years from the commencement of this Constitution, compulsory education for all children until they complete the age of fourteen years ; and

(*iii*) to ensure to all workers and employees adequate facilities for adult education and part time technical, professional and vocational courses.

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21. The State shall strive to secure :

(*a*) to all children the right to happy childhood with adequate medical care and attention, and

(*b*) to all children and youth equal opportunities in education and employment, protection against exploitation, and against moral or material abandonment.

22. The State shall endeavour to secure to all women :

(*a*) the right to equal pay for equal work ;

(*b*) the right to maternity benefits as well as adequate medical care in all employments ;

(*c*) the right to reasonable maintenance, extending to cases of married women who have been divorced or abandoned ;

(*d*) the right to full equality in all social, educational, political and legal matters ;

(*e*) special protection against disCourtesy, defamation, hooliganism and other forms of misconduct.

23. The State shall guarantee to the socially and educationally backward sections of the people special care in the promotion of their educational, material and cultural interests and protection against social injustice.

24. The State shall make every effort to safeguard and promote the health of the people by advancing public hygiene and by prevention of disease through sanitation, pest and vermin control, propaganda and other measures, and by ensuring widespread, efficient and free medical services throughout the State and, with particular emphasis, in its remote and backward regions.

25. The State shall combat ignorance, superstition, fanaticies, communalism, racialism, cultural backwardness and shall seek to foster brotherhood and equality among all communities under the aegis of a Secular State.

PART V
THE EXECUTIVE
THE SADAR-I-RIYASAT

Head of State :

26. (1) The Head of the State shall be designated as the Sadar-i-Riyasat.

(2) The executive power of the State shall be vested in the Sadar-i-Riyasat and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

(3) Nothing in this section shall :

(*a*) be deemed to transfer to the Sadar-i-Riyasat any functions conferred by any existing law or any other authority ; or

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(*b*) prevent the State Legislature from conferring by law functions on any authority subordinate to the Sadar-i-Riyasat

Election and recognition :

27. The Sadar-i-Riyasat shall be the person who for the time being is recognised by the President as such :

Provided that no person shall be so recognised unless he :

(*a*) is a permanent resident of the State ;

(*b*) is not less than twenty-five years of age ; and

(*c*) has been elected as Sadar-i-Riyasat by a majority of the total membership of the Legislative Assembly in the manner set out in the First Schedule.

Term of Office :

28. (1) The Sadar-i-Riyasat shall hold office during the pleasure of the President.

(2) The Sadar-i-Riyasat may, be writing under his hand addressed to the President, resign his office.

(3) Subject to the foregoing provisions of this section, the Sadar-i-Riyasat shall hold office for a term of five years from the date on which he enters upon his office :

Provided that he shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Ligibility for re-election :

29. A person who holds or has hold office as Sadar-i-Riyasat shall, subject to the other provisions of this Constitution, be eligible for re-election to that office.

Conditions of office :

30. (1) The Sadar-i-Riyasat shall not be a member of either House of Legislature and if a member of either House be elected and recognised as Sadar-i-Riyasat, he shal be deemed to have vacated his seat in the House on the date on which he enters upon his office as Sadar-i-Riyasat.

(2) The Sadar-i-Riyasat shall not hold any other office of profit.

(3) The Sadar-i-Riyasat shall be entitled to such emoluments, allowances and privileges as are specified in the Second Schedule.

(4) The emoluments and allowances of the Sadar-i-Riyasat shall not be diminished during his term of office.

Oath of office :

31. The Sadar-i-Riyasat and every person acting as Sadar-i-Riyasat shall, before entering upon his office, make and subscribe in the presence of the Chief Justice of the High Court or, in his absence, the senior-most Judge of the High Court available, an oath or affirmation in the following form, that is to say :

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"I, A.B., do swear in the name of God/solemnly affirm that I will faithfully discharge the functions of the Sadar-i-Riyasat of Jammu and Kashmir and will do the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of the State."

Removal from office :

32. The Sadar-i-Riyasat may be removed from his office by the President if an address by the Legislative Assembly supported by a majority of not less than two thirds of its total membership is presented to the President praying for such removal on the ground of violation of the Constitution.

Acting Sadar-i-Riyasat :

33. When a vacancy occurs in the office of the Sadar-i-Riyasat by reason of his death, resignation or removal or when the Sadar-i-Riyasat is unable to discharge his functions owing to absence, illness or any other cause, the functions of the office shall, until the assumption of office by a newly elected Sadar-i-Riyasat or the resumption of duties by the Sadar-i-Riyasat as the case may be, be discharged by such person as the President may, on the recommendation of the Council of Ministers of the State, recognise as the acting Sadar-i-Riyasat.

Power to grant pardons, reprieves, etc. :

34.The Sadar-i-Riyasat shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.

The Council of Ministers

Council of Ministers to aid and advise the Sadar-i-Riyasat :

35. (1) There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the Sadar-i-Riyasat in the exercise of his functions.

(2) All functions of the Sadar-i-Riyasat except those under sections 30, 38 and 92 shall be exercised by him only on the advice of the Council of Ministers.

(3) The question whether any, and if so what, advice was tendered by Ministers to the Sadar-i-Riyasat shall not be inquired into in any Court.

Appointment of Ministers :

36. The Prime Minister shall be appointed by the Sadar-i-Riyasat and the other Ministers shall be appointed by the Sadar-i-Riyasat on the advice of the Prime Minister.

Ministers' responsibility to the Legislaure :

37. (1) The Council of Ministers shall be collectively responsible to the Legislative Assembly.

(2) A Minister who for any period of six consecutive months is not a member of either House of Legislature shall upon the expiry of that period cease to be a Minister.

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Deputy Ministers :

38. The Sadar-i-Riyasat may on the advice of the Prime Minister appoint from amongst the members of either House of Legislture such number of Deputy Ministers as may be necessary.

Tenure of office :

39. The Ministers and the Deputy Ministers shall hold office during the pleasure of the Sadar-i-Riyasat.

Oaths of office and secrecy :

40. Before a Minister or Deputy Minister enters upon his office, the Sadar-i-Riyasat or, in his absence, any person authorised by him, shall administer to the Minister or Deputy Minister the oaths of office and of secrecy according to the forms set out for the purpose in the Fifth Schedule.

Salaries and allowances of Ministers and Deputy Ministers :

41. The Salaries and allowances of Ministers and Deputy Ministers shall be such as the Legislature may from time to time by law determine and, until so determined, shall be such as are payable respectively to the Ministers and the Deputy Ministers under the Jammu and Kashmir Ministers' Salaries Act, 1956 (Act VI of 1956) and the Jammu and Kashmir Ministers' Travelling Allowances Rules for the time being in force..

The Advocate General

Advocate General for the State :

42. (1) The Sadar-i-Riyasat shall appoint a person who is qualified to be appointed a Judge of the High Court, to be Advocate General for the State.

(2) It shall be the duty of the Advocate General to give advice to the Government upon such legal matters and to perform such other duties of a legal character as may from time to time be referred or assigned to him by the Government and to discharge the functions conferred on him by or under this Constitution or any other law for the time being in force.

(3) In the performance of his duties, the Advocate General shall have the right of audience in all Courts in the State.

(4) The Advocate General shall hold office during the pleasure of the Sadar-i-Riyasat and receive such remuneration as the Sadar-i-Riyasat may determine.

CONDUCT OF GOVERNMENT BUSINESS

Rules of Business :

43. The Sadar-i-Riyasat shall make rules for the more convenient transaction of the business of the Government of the State and for the allocation among Ministers of the said business.

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Duties of Prime Minister :

44. It shall be the duty of the Prime Minister :

(*a*) to communicate to the Sadar-i-Riyasat all decisions of the Council of Ministers relating to the administration of the affairs of the State and proposals for legislation ;

(*b*) to furnish such information relating to the administration of the affairs of the State and proposals for legislation as the Sadar-i-Riyasat may call for ; and

(*c*) if the Sadar-i-Riyasat so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

Form of orders and instruments and their authentication :

45. (1) All executive action of the Government shall be expressed to be taken in the name of the Sadar-i-Riyasat or of the Government of Jammu and Kashmir.

(2) Orders and other instruments made and executed in the name of the Sadar-i-Riyasat or of the Government of Jammu and Kashmir shall be authenticated in such manner as may be specified in the rules to be made by the Sadar-i-Riyasat, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Sadar-i-Riyasat or, as the case may be, by the Government of Jammu and Kashmir.

PART VI

THE STATE LEGISLATURE

COMPOSITION OF THE STATE LEGISLATURE

Legislature for the State :

46. There shall be a Legislature for the State which shall consist of the Sadar-i-Riyasat and two Houses to be known respectively as the Legislature Assembly and the Legislative Council.

Composition of Legislative Assembly :

47. (1) The Legislative Assembly shall consist of one hundred members chosen by direct election from territorial constituencies in the State.

Provided that the Sadar-i-Riyasat may, if he is of opinion that women are not adequately represented in the Assembly, nominate not more than two women to be members thereof.

(2) For the purposes of sub-section (1), the State shall be divided into territorial constituencies in such a manner that the ratio between the population of each constituency and the number of seats allotted to it shall, so far as practicable, be the same throughout the State.

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Explanation : In this sub-section, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.

(3) Upon the completion of each census, the number, extent and boundaries of the territorial constituencies shall be readjusted by such authority and in such manner as the Legislature may by law determine.

Provided that such readjustment shall not affect representation in the Legislative Assembly until the dissolution of the then existing Assembly.

Provision relating to Pakistan occupied territory :

48. Notwithstanding anything contained in section 47, until the area of the State under the occupation of Pakistan ceases to be so occupied and the people residing in that area elect their representatives.

(*a*) twenty-five seats in the Legislative Assembly shall remain vacant and shall not be taken into account for reckoning the total membership of the Assembly ; and

(*b*) the said area shall be excluded in delimiting the territorial Constituencies under section 47.

Reservation of seats for Scheduled Castes :

49. (1) There shall be reserved in the Legislative Assembly for the Scheduled Castes in the State a number of seats which shall beer, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Schedule Castes bears to the population of the State.

Explanation : In this sub-section.

(*a*) "Population" has the same meaning as in sub-section (2) of section 47 ; and

(*b*) "Scheduled Castes" means the castes, races or tribes or part of, or groups within, castes, races or tribes which are for the purposes of the Constitution of India deemed to be Schedule Castes in relation to the State under the provisions of article 341 of that Constitution.

(2) The provisions of sub-section (1) shall cease to have effect on the expiration of a period of five years from the commencement of this Constitution.

Provided that such cesser shall not effect any representation in the Legislative Assembly until the dissolution of the their existing Assembly.

Composition of Legislative Council :

50. (1) The Legislative Council shall consist of thirty-six members, chosen in the manner provided in this section.

(2) Eleven members shall be elected by the members of the Legislative Assembly from amongst persons who are residents of the Province of Kashmir and are not members of the Legislative Assembly :

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Provided that of the members so elected, at least one shall be a resident of Ladakh district.

(3) Eleven members shall be elected by the members of the Legislative Assembly from amongst persons who are residents of the Province of Jammu and are net members of the Legislative Assembly.

Provided that, of the members so elected, at least one shall be a resident of Doda District and at least one shall be a resident of Poonch district.

(4) One member shall be elected by each of the following electorates, namely :

(*a*) the members of Municipal Council, Town Area Committees and notified area committees in the Province of Kashmir.

(*b*) the members of Municipal Council, Town Area Committees, and notified area committees in the Province of Jammu.

(*c*) permanent residents who have been for at least three years engaged in teaching in reognised educational institutions in the Province of Kashmir.

(*d*) permanent residents who have been for at least three years engaged in teaching in recognised educational institutions in the Province of Jammu.

(5) Two members shall be elected by each of the following electorates, namely :

(*a*) the members of the Panchayats and such other local bodies in the Province of Kashmir as the Sadar-i-Riyasat may be order specify ;

(*b*) the members of the Panchyats and such other local bodies in the Province of Jammu as the Sadar-i-Riyasat may by order specify.

(6) Six members shall be nominated by the Gadar-i-Riyasat, not more than three of whom shall be persons belonging to any of the socially or economically backward classes in the State, and the others shall be persons having special knowledge or practical experience in respect to matters such as literature, science, art, cooperative movement and social service.

(7) Elections under sub-sections (2) and (3) shall be hold in accordance with the system of proportional representation by means of the single transferable vote.

General Provisions

Qualifications for membership of the Legislature :

51. A person shall not be qualified to be chosen to fill a seat in the Legislature unless he :

(*a*) is a permanent resident of the State ;

(*b*) is, in the case of a seat in the Legislature Assembly, not less than twenty five years of age, in the case of a seat in the Legislative Council, not less than thirty years of age ; and

(*c*) possesses such other qualifications as may be prescribed in that behalf by or under law made by Legislature.

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Duration of Legislature :

52. (1) The Legislative Assembly, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

Provided that the said period may, while a proclamation of emergency issued under article 352 of the Constitution of India, is in operation, be extended by the State Legislature by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the proclamation has ceased to operate.

(2) The Legislative Council shall not be subject to dissolution but as nearly as possible one-third of the members thereof shall retire, as soon as may be, on the expiration of every second year in accordance with the provisions made in that behalf by Legislature by law.

Session of the Legislature, Prorogation and dissolution :

53. (1) The Sadar-i-Riyasat shall from time to time summon each House of Legislature to meet at such time and place as he thinks fit, but six months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

(2) The Sadar-i-Riyasat may from time to time :

(*a*) prorogue the Houses or either House ;

(*b*) dissolve the Legislative Assembly.

Right of Sadar-i-Riyasat to address and send messages to the House or Houses :

54. (1) The Sadar-i-Riyasat may address either House of the Legislature, or both Houses assembled together, and may for that purpose require the attendance of members.

(2) The Sadar-i-Riyasat may send messages to either House, whether with respect to a Bill then pending in the Legislature or otherwise, and a House to which may message is so sent shall with all convenient despatch consider any matter required by the message to be taken into consideration.

Special address by the Sadar-i-Riyasat :

55. (1) At the commencement of the first session after each general election to the Legislative Assembly and at the commencement of the first session of each year, the Sadar-i-Riyasat shall address both Houses of Legislature assembled together and inform the Legislature of the causes of its summons.

(2) Provision shall be made by the rules regulating the procedure of either House for the allotment of time for discussion of the matters referred to in such address.

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Rights of Ministers and Advocate General as respects the Houses :

56. Every Minister and the Advocate General shall have the right to speak in, and otherwise to take part in the proceedings of both Houses and to speak in the otherwise take part in the proceedings of any Committee of the Legislature of which he may be named a member, but shall not, by virtue of this section be entitled to vote.

Offices of the State Legislature

The Speaker and Deputy Speaker of the Legislative Assembly :

57. The Legislative Assembly shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

Vacation and resignation of, and removal from the offices of the Speaker and Deputy Speaker :

58. A member holding office as Speaker or Deputy Speaker of the Legislative Assembly :

(*a*) shall vacate his office if he ceases to be a member of the Assembly;

(*b*) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office ; and

(*c*) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly ;

Provided that no resolution for the purpose of clause

(*d*) shall be moved unless at least fourteen days notice has been given of the intention to move the resolution.

Provided further that, whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

Power of the Deputu Speaker or other person to perform the duties of the office of, or to act, as Speacker :

59. (1) While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or, if the office of the Deputy Speaker is also vacant, by such member of the Assembly as the Sadar-i-Riyasat may appoint for the purpose.

(2) During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or, if no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

The Speaker and the Deputy Speaker not to preside while a resolution for his removal from office is under consideration :

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60. (1) At any sitting of the Legislative Assembly, while any resolution for the removal of the Speaker from his office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker, from his office is under consideration, the Deputy Speaker, shall not, though he is present, preside, and the provisions of sub-section (2) of section 59 shall apply in relation to every such sitting as they apply in relation to a sitting from which the Speaker or, as the case may be, the Deputy Speaker, is absent.

(2) The Speaker shall have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and shall, notwithstanding any thing in section 67, be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

The Chairman and Deputy Chairman of the Legislative Council :

61. (1) The Legislative Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and, so often as the office of the Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

(2) The provisions sections 58, 59 and 60 shall apply in relation to the Chairman and Deputy Chairman of the Legislative Council with the substitution of the words 'Chairman' and 'Council' for the words 'Speaker' and 'Assembly' respectively, wherever they occur in those provisions and with the omission of the further provision to section 58.

Salaries and allowances of the Speaker and Deputy Speaker and Chairman and Deputy Chairman :

62. There shall be paid to the Speaker and the Deputy Speaker of the Legislative Assembly and to the Chairman and the Deputy Chairman of the Legislative Council, such salaries and allowances as may be respectively fixed by Legislature by law and, until provision in that behalf is so made, such salaries and allowances as are specified in the Third Schedule.

Secretariat of the Legislature :

63. (1) Each House of the Legislature shall have a separate secretarial staff ;

Provided that nothing in this sub-section shall be construed as preventing the creation of posts common to both the Houses.

(2) The Legislature may by law regulate the recruitment and the conditions of service of persons appointed, to the secretarial staff of each House.

(3) Until provision is made by the Legislature under sub-section (2), the Sadar-i-Riyasat may, after consultation with the Speaker of the Legislative

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Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council, and any rules so made shall have effect subject to the provision of any law made under the said sub-section.

Conduct of Business

Oath or affirmation by member :

64. Every member of the Legislative Assembly or the Legislative Council shall, before taking his seat, make and subscribe before the Sadar-i-Riyasat or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Fifth Schedule.

Quorum :

65. Save as otherwise provided by the rules of procedure of the House, the quorum to constitute a meeting of the Legislative Assembly and of the Legislative Council be twenty and ten respectively.

Power of Houses to act notwithstanding vacancies :

66. A House of the Legislature shall have power to act notwithstanding any vacancy in the membership thereof, and any proceedings in the Legislature shall be valid notwithstanding that it is discovered subsequently that some person who was not entitled so to do sat or voted or otherwise took part in the proceedings.

Voting in two Houses :

67. (1) Save as otherwise provided in this Constitution, all questions at any sitting of a House of the Legislature shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.

(2) The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

Disqualifications of Members

Vacation of Seats :

68. (1) No person shall be a member of both Houses of the Legislature and provision shall be made by Legislature by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.

(2) If a member of a House of the Legislature resigns his seat by writing under his hand addressed to the Speaker or the Chairman, as the case may be, his seat shall thereupon become vacant.

(3) If for a period of sixty days a member of a House of the Legislature is without permission of the House absent from all meetings thereof, the House may declare his seat vacant ;

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Provided that in computing the said period of sixty days no account shall be taken of :

(*a*) such absence caused by reason beyond his control ; or

(*b*) any period during which the House is prorogued or is adjourned for more than four consecutive days.

Disqualification for Membership :

69. (1) A person shall be disqualified for being chosen and for being, a member of the Legislative Assembly or Legislative Council :

(*a*) if he holds any office of profit under the Government of India or the State Government or any other State Government within the Union of India, other than an office declared by Legislature by law not to disqualify its holder ;

(*b*) if he is of unsound mind and stands so declared by a competent Court;

(*c*) if he is an undischarged insolvent ;

(*d*) if he is not a permanent resident of the State or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State ;

(*e*) if he is so disqualified by or under any law made by the Legislature.

(2) For the purposes of this section, a person shall not be deemed to hold an office of profit under the Government of India, the State Government or any other State Government within the Union of India, by reason only that he is a Minister, or a Deputy Minister.

Decision on questions as to disqualifications of members :

70. (1) If it is represented to the Speaker or the Chairman that a member of the Legislative Assembly or, as the case may be, of the Legislative Council is disqualified for being such a member under the provisions of section 69, or was so disqualified at any time since being chosen as a member, and the member does not admit that he is or was so disqualified, the question shall be referred to the High Court for decision and its decision shall be final.

Provided that where the disqualification in question arises from circumstances which subsisted at the time of his being chosen as such member, no such representation as aforesaid shall be entertained :

(*a*) unless it is made after the expiration of the period prescribed by law for presenting an election petition calling in question the election of the member, and

(*b*) if such an election petition is pending or has been tried, unless the Speaker or Chairman, as the case may be, is satisfied that the question of the member's disqualification by reason of those circumstances has not

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been raised or as the case may be, was not raised, in the proceedings on the election petition.

(2) Where on a representation made under sub-section (1) the member admits that he is or was disqualified under the provisions of section 69, or where on a reference made under that sub-section the High Court decides that the member is or was so disqualified, his seat shall thereupon become vacant.

Penalty for sitting and voting before making oath or affirmation when not qualified or disqualified :

71. If a person sits or votes as a member of the Legislative Assembly or the Legislative Council before he has complied with the requirements of section 64 or when he knows that he is not qualified or that he is disqualified for membership thereof, or that he is prohibited from so doing by the provisions of any law made by the Legislature, he shall be liable in respect of each day on which he so sits or votes to a penalty of one hundred rupees to be recommend as a debt due to the State.

Powers, Previleges & Immunities of the State Legislature and its Members

Powers, privileges, etc. of the Houses of Legislature and of the members and committees thereof:

72. (1) Subject to the provisions of this Constitution and to the rules and standing orders regulating the procedure of the Legislature there shall be freedom of speech in the Legislature.

(2) No member of the Legislature shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Legislature or any committee thereof and no person shall be so liable in respect of the publication by or under the authority of a House of the Legislature of any report, paper, votes or proceedings.

(3) In other respects, the powers, privileges and immunities of a House of the Legislature and of the members and the committees of a House of the Legislature shall be such as may from time to time be defined by Legislature by law, and until so defined shall be those of the Parliament of India and of its members and committees.

(4) The provisions of sub-sections (1), (2) and (3) shall apply in relation to persons who by virtue of this Constitution have the right to speak in, and otherwise to take part in the proceedings of a House of the Legislature or any committee thereof as they apply in relation to members of that Legislature

Salaries and allowances of Members :

73. Members of the Legislative Assembly and the Legislative Council shall be entitled to receive such salaries and allowances as may from time

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to time be determined by Legislature by law and, until provision in that respect is so made, salaries and allowances at such rates and upon such conditions as were immediately before the commencement of this Constitution applicable in the case of members of the Constituent Assembly.

Legislative Procedure

Provisions as to introduction and passing of Bills :

74. (1) Subject to the provisions of sections 76 and 84 with respect to Money Bills and other financial Bills, a Bill may originate in either House of the Legislature.

(2) Subject to the provisions of sections 75 and 76 a Bill shall not be deemed to have been passed by the Legislature unless it has been agreed to by both Houses, either without amendment or with such amendment only as are agreed to by both Houses.

(3) A Bill pending in the Legislature shall not lapse by reason of the prorogation of the House or Houses thereof.

(4) A Bill pending in the Legislative Council which has not been passed by the Legislative Assembly shall not lapse on a dissolution of the Assembly.

(5) A Bill which is pending in the Legislative Assembly or which having been passed by the Legislative Assembly, is pending in the Legislative Council shall lapse on a dissolution of the Assembly.

Restriction on powers of Legislative Council as to Bills other than Money Bills :

75. (1) If after a Bill has been passed by the Legislative Assembly and transmitted to the Legislative Council :-

(*a*) the Bill is rejected by the Council ; or

(*b*) more than three months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it ; or

(*c*) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree ; the Legislative Assembly may, subject to the rules regulating to procedure, pass the Bills again in the same or in any subsequent session with or without such amendments, if any, as have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council :-

(*a*) the Bill is rejected by the Council ; or

(*b*) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it ; or

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(*c*) the Bill is passed by the Council with a amendments to which the Legislative Assembly does not agree ; the Bill shall be deemed to have been raised by the House of the Legislature in the form in which it was passed by the Legislative Assembly for the second time with such amendments, if any, as have been made or suggested by the Legislative Council and agreed to by the Legislative Assembly.

(3) Nothing in this section shall apply to a Money Bills.

Special Procedure in respect of Money Bills :

76. (1) A Money Bill shall not be introduced in the Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly it shall be transmitted to the Legislative Council for its recommendations and the Legislative Council shall within a period of fourteen days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of the Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly.

(4) If the Legislative Assembly does not accept any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the amendments recommended by the Legislative Council.

(5) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of fourteen days, it shall be deemed to have been passed by both Houses at the expiration of the said period in the form in which it was passed by the Legislative Assembly.

Definitions of 'Money Bills' :

77. (1) For the purposes of this part, a Bill shall be deemed to be a Money Bill if it contains provisions dealing with all or any of the following matters, namely :

(*a*) the imposition, abolition, remission, alteration or regulation of any tax ;

(*b*) the regulation of the borrowing of money or the giving of any guarantee by the State, or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the State ;

(*c*) the custody of the Consolidated Fund or the Contingency Fund of the State, the payment of moneys into or the withdrawal of moneys from any such Fund ;

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(*d*) the appreciation of moneys out of the Consolidated Fund of the State;

(*e*) the declaring of any expenditure to be expenditure charged on the Consolidated Fund of the State, or the increasing of the amount of any such expenditure.

(*f*) the receipt of money on account of the Consolidated Fund of the State or the public account of the State or the customs or issue of such money, or

(*g*) any matter incidental to any of the matters specified in clauses (a) to (*f*).

(2) A Bill shall not be deemed to be a Money Bill by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) If any question arises whether a Bill introduced in the Legislature is a Money Bill or not, the decision of the Speaker of the Legislative Assembly thereupon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under section 76 and when it is presented to the Sadar-i-Riyasat for assent under section 75, the certificate of the speaker of the Legislative Assembly signed by him that it is a Money Bill.

Assent to Bills :

78. When a Bill has been passed by both Houses of the Legislature, it shall be presented to the Sadar-i-Riyasat and the Sadar-i-Riyasat shall declare either that he assents to the Bill or that be withholds assent therefrom ; provided that the Sadar-i-Riyasat may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a Money Bills together with a message requesting that the Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message and, when a Bill is so returned, the Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the Houses, with or without amendment and presented to the Sadar-i-Riyasat for assent, the Sadar-i-Riyasat shall not withhold assent therefrom.

Procedure in Financial Matters

Annual Financial Statement :

79. (1) The Sadar-i-Riyasat shall in respect of every financial year cause to be laid before both Houses of the Legislature a Statement of the estimated receipts and expenditure of the State for that year, in this part referred to as the 'annual financial Statement'.

(2) The estimates of expenditure embodied in the annual financial Statement shall show separately :

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(*a*) the sums required to meet expenditure described by this Constitution as expenditure charged upon the Consolidated Fund of the State ; and

(*b*) the sums required to meet other expenditure proposed to be made from the Consolidated fFund of the State ; and shall distinguish expenditure on revenue account from other expenditure.

(3) The following expenditure shall be expenditure charged on the Consolidated Fund of the State ;

(*a*) the emoluments and allowances of the Sadar-i-Riyasat and other expenditure relating to his office ;

(*b*) the salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and of the Chairman and the Deputy Chairman of the Legislative Council

(*c*) debt. charges for which the State is liable including interest, sinking Fund charges and redemption charges and other expenditure relating to the raising of loans and service and redemption of debt ;

(*d*) expenditure in respect of the salaries and allowances of the Judges of the High Court ;

(*e*) any sums required to satisfy any Judgement, decree or award of any Court or arbitral tribunal ;

(*f*) any other expenditure declared by this Constitution, or by Legislature by law, to be so charged.

Procedure with respect to estimates :

80. (1) So much of the estimates as relates to expenditure charged upon the Consolidated Fund of the State shall not be submitted to the vote of the Legislative Assembly, but nothing in this sub-section shall be construed as preventing the discussion in the Legislature of any of these estimates.

(2) So much of the said estimates as relates to other expenditure shall be submitted in the form of demands for grants to the Legislative Assembly, and the Legislative Assembly shall have power to assent, or to refuse to assent, to any demand, or to assent to any demand subject to a reduction of the amount specified therein.

(3) No demand for a grant shall be made except on the recommendation of the Sadar-i-Riyasat.

Appropriation Bills :

81. (1) As soon as may be after the grants under section 80 have been made by the Assembly, there shall be introduced a Bill to provide for the appropriation out of the Consolidated Fund of the State of all moneys required to meet :

(*a*) the grants so made by the Assembly and

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(*b*) the expenditure charged on the Consolidated Fund of the State but not exceeding in any case the amount shown in the Statement previously laid before the Houses.

(2) No amendment shall be proposed to any such Bill in either House of the Legislature which will have the effect of verifying the amount or altering the destination of any grant so made or of varying the amount of any expenditure charged on the Consolidated Fund of the State, and the decision of the person presiding as to whether an amendment is inadmissible under this sub-section, shall be final.

(3) Subject to the provisions of sections 82 and 83 no money shall be withdrawn from the Consolidated Fund of the State except under appropriation made by law passed in accordance with the provisions of this section.

Supplementary additional or excess amuonts :

82. (1) The Sadar-i-Riyasat shall :-

(*a*) if the amount authorized by any law made in accordance with the provisions of section 81 to be expended for a particular service for the current financial year is found to be insufficient for the purposes of that year or when a need has arisen during the current financial year for supplementary or additional expenditure upon some new service not contemplated in the annual financial Statement for that year, or

(*b*) if any money has been spent on any service during a financial year in excess of the amount granted for that service and for that year cause to be laid before the Houses of the Legislature another Statement showing the estimated amount of that expenditure or cause to be presented to the Legislative Assembly a demand for such excess, as the case may be.

(2) The provisions of sections 79, 80 and 81 shall have effect in relation to any such Statement and expenditure or demand and also to any law to be made authorizing the appropriation of moneys cut of the Consolidated Fund of the State to meet such expenditure of the grant in respect of such demand as they have effect in relation to the annual financial Statement and the expenditure mentioned therein or to a demand of a grant and the law to be made for the authorisation of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure or grant.

Votes on account, votes of credit and exceptional all grants :

83. (1) Notwithstanding anything in the foregoing provisions of this Part, the Legislative Assembly shall have power –

(*a*) to make any grant in advance in respect of the estimated expenditure for a part of any financial year pending the completion of the procedure prescribed in section 80 for the voting of such grant and the passing of the

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law in accordance with the provisions of section 81 in relation to that expenditure ;

(*b*) to make a grant for meeting an unexpected demand upon the resources of the State when on account of the magnitude or the indefinite character of the service the demand cannot be Stated with the details ordinarily given in an annual financial Statement ;

(*c*) to make an exceptional grant which forms no part of the current service of any financial year ; and the Legislature shall have power to authorize by law and withdrawal of moneys from the Consolidated Fund of the State for the purposes for which the said grants are made.

(2) The provisions of section 80 and 81 shall have effect in relation to the making of any grant under sub-sections (1) and to any law to be made under that sub-section as they have effect in relation to the making of a grant with regard to any expenditure mentioned in the annual financial Statement and the law to be made for the authorization of appropriation of moneys out of the Consolidated Fund of the State to meet such expenditure.

Special Provisions as to Financial Bills

(84) (1) A Bill or amendment making provision for any of the maters specified in clauses (*a*) to (*f*) of sub-section (1) of section 77 shall not be introduced or moved except on the recommendation of the Sadar-i-Riyasat, and a Bill making such provisions shall not be introduced in the Legislative Councils provided that no recommendation shall be required under this sub-section for the moving of an amendment making provision for the reduction or abolition of any tax.

(2) A Bill or amendment shall not be deemed to make provision for any of the matters aforesaid by reason only that it provides for the imposition of fines or other pecuniary penalties, or for the demand or payment of fees for licences or fees for services rendered, or by reason that it provides for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(3) A Bill which, if enacted and brought into operation, would involve expenditure from the Consolidated Fund of the State shall not be passed by a House of the Legislature unless the Sadar-i-Riyasat has recommended to that House the consideration of the Bill.

Procedure Generally

Rules of Procedure :

85. (1) A House of the Legislature may make rules for regulating, subject to the provisions of this Constitution, its procedure and the conduct of its business.

(2) Until rules are made under sub-section (1), the rules of procedure and standing orders in force immediately before the commencement of this

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Constitution with respect to the Constituent Assembly while discharging the functions of the Legislative Assembly shall have effect in relation to each House of the Legislature subject to such modifications and adaptations as may be made therin by the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be.

(3) The Sadar-i-Riyasat, after consultation with the Speaker of the Legislative Assembly and the Chairman of the Legislative Council, may make rules as to the procedure with respect to communications between the two Houses.

Regulation by law of procedure in the Legislature in relation to financial business :

86. The Legislature may, for the purpose of the timely completion of financial business, regulate by law the procedure of, and the conduct of business in the Houses of the Legislature in relation to any financial matter or to any Bill for the appropriation of moneys out of the Consolidated Fund of the State, and, if and so far as any provision of any law so made is inconsistent with any rule made by either House of the Legislature under sub-section (1) of section 86 or with any rule or standing order having effect in relation to either House of the Legislature under sub-section (2) of that section, such provision shall prevail.

Language to be used in the Legislature :

87. (1) Business in the Legislature shall be transacted in Urdu or in English :

Provided that the Speaker of the Legislative Assembly or the Chairman of the Legislative Council or person acting as such, as the case may be, may permit any member to address the House in Hindi, or if he cannot adequately express himself in any of the aforesaid languages, to address the House in his mother-tongue.

(2) The official record of the proceedings in the Legislature shall be kept in Urdu as well as in English.

(3) The text of all Bills and amendments thereof moved in and of all acts passed by the Legislature which shall be treated as authoritative, shall be in English.

Restriction on discussion in the Legislature :

88. No discussion shall take place in the Legislature with respect to the conduct of any Judge of the Supreme Court or of the High Court in the discharge of his duties.

Courts not to inquire into proceedings of the Legislature :

89. (1) The validity of any proceedings in the Legislature shall not be called in question on the ground of any alleged irregularity of procedure.

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(2) No officer or member of the Legislature in whom powers are vested by or under this Constitution for regulating procedure or the conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any Court in respect of the exercise by him of those powers.

Requirements as to recommendations regarded as matters of procedure only :

90. No Act of the Legislature and no provision in any such Act shall be invalid by reason only that some recommendation required by this Constitution was not given, if assent to that Act was given by the Sadar-i-Riyasat.

Legislative power of the Sadar-i-Riyasat

Power of Sadar-i-Riyasat to promulgate ordinances during recess of Legislature :

91. (1) If at any time, except when both Houses of the Legislature are in session, the Sadar-i Riyasat is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

Provided that the power of making an Ordinance under this section shall extend only to those matters with respect to which the Legislature has power to make laws.

(2) An ordinance promulgated under this section shall have the same force and effect as an act of the Legislature assented to by the Sadar-i-Riyasat, but every such ordinance :

(*a*) shall be laid before both the Houses of the Legislature, and shall cease to operate at the expiration of six weeks from the re-Assembly of the Legislature, or if before the expiration of that period a resolution dis-approving it is passed by the Legislative Assembly and agreed to by the Legislative Council, upon the resolution being agreed to by the Legislative Council ; and

(*b*) may be withdrawn at any time by the Sadar-i-Riyasat.

Explanation : Where the Houses of the Legislature are summoned to re-assemble on different dates, the period of six weeks shall be reckoned from the latter of those dates for the purposes of this sub-section.

Breakdown of Constitutional Mechinery

Provisions in case of failure of Constitutional machinery in the State :

92. (1) If at any time the Sadar-i-Riyasat is satisfied that a situation has arisen in which the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the Sadar-i-Riyasat may by proclamation :

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(*a*) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by anybody or authority in the State ;

(*b*) make such incidental and consequential provisions as appear to the Sadar-i-Riyasat to be necessary or desirable for giving effect to the objects of the proclamation, including provisions for suspending in whole of in part the operation of any provision of this Constitution relating to anybody or authority in the State.

Provided that nothing in this section shall authorise the Sadar-i-Riyasat to assume to himself any of the powers vested in or exercisable by the High Court or to suspend in whole or in part the operation of any provision of this Constitution relating to the High Court.

(2) Any such proclamation may be revoked or varied by a subsequent proclamation.

(3) Any such proclamation whether varied under sub-section (2) or not, shall, except where it is a proclamation revoking a previous proclamation, cease to operate on the expiration of six months from the date on which it was first issued.

(4) If the Sadar-i-Riyasat by a proclamation under this section assumes to himself any of the powers of the Legislature to make laws, any law made by him in the exercise of that power shall, subject to the terms thereof, continue to have effect until two years have elapsed from the date on which the proclamation ceases to have effect, unless sooner repealed or re-enacted by an Act of the Legislature, and any reference in this Constitution to any Acts of or laws made by the Legislature shall be construed as including a reference to such law.

(5) No proclamation under sub-section (1) shall be issued except with the concurrence of the President of India.

PART VII
THE HIGH COURT

Constitution of High Court :

93. (1) There shall be a High Court for the State, consisting of a Chief Justice and two or more other Judges.

(2) The high Court exercising jurisdiction in relation to the State immediately before the commencement of this Constitution shall be the High Court for the State.

High Court to be a Court of record :

94. The High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself.

Appointment and tenure of office of Judges :

95. Every Judge of the High Court shall be appointed by the Sadar-i-Riyasat by warrant under his hand and seal and, in the case of appointment

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of a Judge other than the Chief Justice, after consultation with the Judges of the High Court and shall hold office until he attains the age of sixty years.

Qualifications for appointment :

96. A person shall not be qualified for appointment as a Judge of the High Court unless he is a citizen of India, and

(*a*) has for at least ten years held a judicial office in the State or in any other part of India ; or

(*b*) has for at least ten years been an advocate of the State High Court or of any other High Court in India or of two or more such Courts in succession.

Explanation : For the purposes of this section in computing the period during which a person has been an advocate of a High Court there shall be included any period during which the person held judicial office after he became an advocate.

Oath or affirmation by Judges of the High Court :

97. Every person appointed to be a Judge of the High Court shall, before he enters upon his office, make and subscribe be the Sadar-i-Riyasat, or some person appointed in that behalf of him, an oath or affirmation according to the form set out purpose in the fifth schedule.

Salaries, etc. of Judges :

98. (1) There shall be paid to the Judges of the such salaries as are specified in the Fourth Schedule.

(2) Every Judge shall be entitled to such rights in respect of leave of absence and from time to time be determined by or under law of Legislature, and until so determined, to such all rights are specified in the Fourth Schedule :

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment.

Resignation or removal of a Judge High Court :

99. (1) A Judge of the High Court may, by writing under his hand addressed to the Sadar-i-Riyasat, resign his office.

(2) A Judge of the High Court shall not be removed from his office except by an order of the Sadar-i-Riyasat passed after an address by each House of the Legislature supported by a majority of the total membership of that House and by a majority not less than two-thirds of the members of that House present and votting has been presented to the Sadar-i-Riyasat in

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the same session for such removal on the ground of proved mis-behaviour or incapacity.

(3) The Legislature may by law regulate the procedure for the presentation of an address and for the investigation and proof of the mis-behaviour or incapacity of a Judge under sub-section (2).

Appointment of Acting Judges :

100. (1) When the office of the Chief Justice is vacant or when the Chief Justice is by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the Court as the Sadar-i-Riyasat may appoint for the purpose.

(2) When any Judge of the High Court other than the Chief Justice is by reason of absence or for any other reason unable to perform the duties of his office or is appointed to act temporarily as Chief Justice, the Sadar-i-Riyasat may appoint a duly qualified person to act as a Judge of the Court until the permanent Judge has resumed his duties.

Place of sitting of the Court :

101. (1) The usual places of sitting of the High Court shall be Jammu and Srinagar.

(2) The Chief Justice shall with the approval of the Sadar-i-Riyasat, determine the number of Judges who shall sit from time to time at Jammu and at Srinagar for such period as may be deemed necessary.

(3) Whenever it appears to the Chief Justice that it is desirable that the High Court should hold its sitting at a place other than Srinagar and Jammu, one or more Judges of the High Court as determined by him shall, with the previous approval of the Sadar-i-Riyasat, sit at such place.

Saving of Existing Jurisdiction of the High Court :

102. Subject to the provisions of this Constitution and to the provisions of any law for the time being in force, the jurisdiction of, and the law administered in the High Court and the respective powers of the Judges thereof in relation to the administration of Justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof, sitting alone or in Division Courts, shall be same as immediately before the commencement of this Constitution.

Power to issue certain writs :

103. The High Court shall have power to issue to any person or authority, including in appropriate cases any Government within the State, directions, orders or writs, including writs in the nature of *habeas corpus, mandamus, prohibition, quo warranto* and *certiorari,* or any of them, for

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any purpose other than those mentioned in clause (2 A) of Article 32 of the Constitution of India.

Superintendence and control of subordinate Courts :

104. (1) The High Court shall have superintendence and control over all Courts for the time being subject to its appellate or revisional jurisdiction and all such Courts shall be subordinate to the High Court.

(2) Without prejudice to the generality of the foregoing provision, the High Court may :

(*a*) call for returns from such Courts ;

(*b*) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts ; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Court.

(3) The High Court may also settle tables of fees to be allowed to the sheriff and all clerks and officers of such Courts and to attorneys, advocates and pleaders practicing therin :

Provided that any rules made, forms prescribed or tables settled under sub-section (2) or sub-section (3) shall not be inconsistent with the provisions of any law for the time being in force, and shall require the pervious approval of the Sadar-i-Riyasat.

Transfer of cases to High Court :

105. If the High Court is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of this Constitution or the Constitution of India the determination of which is necessary for the disposal of the case, it shall withdraw the case and may :

(*a*) either dispose of the case itself, or

(*b*) determine the said question of law and return the case of the Court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said Court shall on receipt thereof proceed to dispose of the case in conformity with such judgment.

Prohibition of practising in Courts or before any authority by Judges :

106. No person who was hold office as a Judge of the High Court after the commencement of this Constitution shall plead or act in any Court or before any authority within the State.

Seal :

107. (1) The High Court shall have and use as occasion may require a seal bearing a device and impression of the State emblem with an exergue or label surrounding the same with the inscription :

'The seal of the High Court of Jammu and Kashmir'

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(2) The seal shall be delivered to, and kept in the custody of, the Registrar or such other officer of the Court as the Chief Justice may designate in this behalf.

Officers and servants of the High Court :

108. (1) Appointments of officers and servants of the High Court shall be made by the High Court or by such officer of the Court as may be authorised in this behalf :

Provided that the Sadar-i-Riyasat may by rule require that in such cases as may be specified in the rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature, the conditions of service of the officers and servants of the High Court shall be such as may be prescribed by rules made by the High Court with the approval of the Sadar-i-Riyasat.

(3) The administrative expenses of the High Court including all salaries, allowances and pensions payable to or in respect to the officers and servants of the Court, shall be charged upon the consolidated Fund of the State, and any fees or other moneys taken by the Court shall from part of that Fund.

Subordinate Courts

Appointment of district Judges :

109. (1) Appointment of persons to be, and the posting and promotion of, district Judges in the State shall be made by the Sadar-i-Riyasat in consultation with the High Court.

(2) A person not already in the service of the State shall only be eligible to be appointed a district Judge if he has been for not less than seven years an advocate or pleader and is recommended by the High Court for appointment.

Requirement of persons other than district Judges to the judicial service :

110. Appointments of persons other than district Judges to the judicial service of the State shall be made by the Sadar-i-Riyasat in accordance with rules made by him in that behalf after consultation with the Public Service Commission and with the High Court.

Control over subordinate Courts :

111. The control over district Courts and Courts subordinate thereto including the posting and promotion of, and that grant of leave to, persons belonging to the judicial service of the State and holding any post inferior to the post of district Judge shall be vested in the High Court ; but nothing in this section shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions

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of his service or as authorizing the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

Interpretation :

112. In this part –

(*a*) the expression 'district Judge' includes additional district Judge, assistant district Judge, sessions Judge, additional sessions Judge and assistant sessions Judge ;

(*b*) the expression 'judicial service' means a service consisting exclusively of persons intended to fill the post of district Judge and other civil judicial posts inferior to the post of district Judge.

Applications of the provisions of this part to certain class or classes of Magistrates :

113. The Sadar-i-Riyasat may by public notification direct that the foregoing provisions of this part and any rules made there under shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

PART VIII
FINANCE, PROPERTY AND CONTRACTS

Taxes not to be imposed save by authority of law :

114. No tax shall be levied or collected except by authority of law.

Consolidated Fund and Public Account :

115. (1) Subject to the provisions of section 116, all revenues received by the Government, all loans raised by the Government by the issue of treasury Bills, loans or ways and means advances and all moneys received by the Government in repayment of loans shall from one Consolidated Fund to be entitled 'the Consolidated Fund of the State'.

(2) All other public moneys received by or on behalf of the Government shall be credited to the public account of the State.

(3) No moneys out of the Consolidated Fund of the State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution.

Contingency Fund :

116. The Legislature may by law establish a contingency Fund in the nature of an imprest to be entitled 'the Contingency Fund of the State' into which shall be paid from time to time such sums as may be determined by such law, and the said Fund shall be placed at the disposal of the Sadar-i-Riyasat to enable advances to be made by him out of such Fund for the

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purposes of meeting unforeseen expenditure pending authorisation of such expenditure by Legislature by law, under section 82 and 83.

Expenditure defrayable by the State out of its revenues :

117. The State may make any grants for any public purpose, notwithstanding that he purpose is not one with respect to which the Legislature may make laws.

Custody, etc. of Consolidated Funds, Contingency Funds and moneys credited to the public account :

118. The custody of the Consolidated Fund of the State and the Contingence Fund of the State, the payment of moneys into such Funds, the withdrawal of moneys therefrom, the custody of public moneys other than those credited to such Fund received by or on behalf of the Government, their payment into the public account of the State and the withdrawal of moneys from such account and all other matters connected with or ancillary to matters aforesaid shall be regulated by law made by the Legislature and, until provision in that behalf is so made, shall be regulated by rules made by the Sadar-i-Riyasat.

Custody, of creditors deposits and other moneys received by public servants and Courts :

119. All moneys received by or deposited with :

(*a*) any officer employed in connection with the affairs of the State in his capacity as such, other than revenues or public moneys raised or received by the Government, or

(*b*) any Court within the State to the credit of any cause, matter, account or persons, shall be paid into the public account of the State.

Property accruing by escheat or lapse or as bona-vacantia :

120. Any property within the State which, if this Constitution had not come into operation, would have accrued to the Government or any other authority in that State by escheat or lapse, or as bona-vascantia for want of a rightful owner, shall vest in the State.

Power to carry on trade etc. :

121. (1) The executive power of the State shall extend, subject to any law made by the State Legislature, to the carrying on of any trade or business, and to the grant, sale, disposition or mortgage of any property held for the purposes of the State, and to the purchase or acquisition of property for those purposes and to the making of contracts.

(2) All property acquired for the purposes of the State shall vest in the State.

Contracts :

122. (1) All contracts made in the exercise of the executive power of the State shall be expressed to be made by the Sadar-i-Riyasat and all such

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contracts and all assurances of property made in the exercise of that power shall be executed on behalf of the Sadar-i-Riyasat by such persons and in such manner as he may direct or authorise.

(2) The Sadar-i-Riyasat shall not be personally liable in respect of any contract or assurance made or executed for the purposee of this Constitution, or for the purposes of any enactment relating to the Government of the State as heretofore in force, nor shall any person making or executing any such contract or assurance on his behalf be personally liable in respect thereof.

Suits and proceedings :

123. The Government may sue or be sued by the name of the State of Jammu and Kashmir and may subject to any provisions which may be made by act of the Legislature enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to its affairs in the like cases as the State might have sued or been sued if this Constitution had not been enacted.

PART IX
THE PUBLIC SERVICES

Recruitment and conditions of service or persons serving the State :

124. Subject to the provisions of this Constitution, the Legislature may by law regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the State :

Provided that it shall be competent for the Sadar-i-Riyasat or such person as he may direct, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the Legislature under this section, and any rules so made shall have effect subject to the provisions of any such Act.

Tenure of office of persons serving the State :

125. (1) Except as expressly provided by this Constitution, every person who is a member of a civil service of the State or holds any civil post under the State holds office during the pleasure of the Sadar-i-Riyasat.

(2) Notwithstanding that a person holding a civil post under the State holds office during the pleasure of the Sadar-i-Riyasat, any contract under which a person, not being a member of a civil service the State, is appointed to hold such a post, may, if the Sadar-i-Riyasat deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation, if before the expiration of an agreed period that post is abolished or he is, for reason not connected with any misconduct on his part, required to vacate that post.

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Dismissal, reduction or removal of persons employed in civil capacities under the State :

126. (1) No person who is a member of a civil service of the State or holds a civil post under the State shall be dismissed or removed by an authority subordinate to that by which he was appointed.

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

Provided that this sub-section shall not apply :

(*a*) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge ;

(*b*) where an authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause ;

(*c*) where the Sadar-i-Riyasat is satisfied that in the interests of the security of the State it is not expedient to give that person such an opportunity.

(3) If any question arises whether it is reasonably practicable to give to any person an opportunity of showing cause under sub-section (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank, as the case may be, shall be final.

Transitional provisions :

127. Until other provisions is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as service or post under the State, shall continue in force so far as consistent with the provisions of this Constitution.

The Public Services Commission

Public service Commission for the State :

128. There shall be Public Service Commission (hereinafter referred to in this part as 'the Commission') for the State.

Appointment and term of office of members :

129. (1) The Chairman and other members of the Commission shall be appointed by the Sadar-i-Riyasat.

Provided that as nearly as may be one half of the members of the Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Government.

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(2) A member of the Commission shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years whichever is earlier.

Provided that – (*a*) a member of the Commission may, by writing under his hand addressed to the Sadar-i-Riyasat, resign his office ;

(*b*) a member of the Commission may be removed from his office in the manner here inafter provided.

(3) A person who holds office as a member of the Commission shall, on the expiration of his term of office be ineligible for re-appointment to that office.

Removal and suspension of a member of the Commission :

130. (1) Subject to the provisions of sub-section (3) the Chairman or any other member of the Commission shall only be removed from his office by order of the Sadar-i-Riyasat on the ground of misbehaviour after the High Court, on reference being made to it by the Sadar-i-Riyasat has, on inquiry held in that behalf, reported that the Chairman or such other member, as the case may be, ought on any such ground to be removed.

(2) The Sadar-i-Riyasat may suspend from office the Chairman or any other member of the Commission in respect of whom a reference has been made to High Court under sub-section (1), until the Sadar-i-Riyasat has passed orders on receipt of the report of the High Court on such reference.

(3) Notwithstanding anything in sub-section (1) the Sadar-i-Riyasat may by order remove from office the Chairman or any other member of the Commission if the Chairman or such other member, as the case may be :

(*a*) is adjudged an insolvent ; or

(*b*) engages during his term of office in any paid employment outside the duties of his office, or

(*c*) is, in the opinion of the Sadar-i-Riyasat, unfit to continue in office by reason of infinity of mind or body.

(4) If the Chairman or any other member of the Commission is or becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Government of the State, the Government of India or the Government of any other State in India or participates in any way in the profit thereof or in any benefit or emolument arising there from otherwise than as a member and in common with other members of an incorporated company, he shall, for the purposes of sub-section (1), be deemed to be guilty of misbehaviour.

Power to make regulations as to conditions of service of members and staff of the Commission :

131. The Sadar-i-Riyasat may by regulations –

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(*a*) determine the number of members of the Commission and their conditions of service ; and

(*b*) make provision with respect to the number of members of the staff of the Commission and their conditions of service :

Provided that the conditions of service of a member of the Commission shall not be varied to his disadvantage after his appointment.

Prohibition as to the holding of offices by members of the Commission on ceasing to be such members :

132. On ceasing to hold office the Chairman and the members of the Commission shall be ineligible for further office under the Government of the State, but a member other than the Chairman shall be eligible for appointment as Chairman of the Commission.

Explanation : For the purposes of this section, the office of Minister or Deputy Minister shall not be deemed to be an office under the Government of the State.

Functions of the Commission :

133. (1) It shall be the duty of the Commission to conduct examinations for appointments to the services of the State.

(2) The Commission shall be consulted :

(*a*) on all matters relating to methods of recruitment to civil services and for civil posts ;

(*b*) on the principles to the followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers ;

(*c*) on all disciplinary matters affecting a person serving under the Government including memorials or petitions relating to such matters ; and it shall be the duty of the Commission to advice on any matter so referred to them and on any other matter which the Sadar-i-Riyasat may refer to them.

Provided that the Sadar-i-Riyasat may make regulations specifying the matters in which either generally, or in any particular class of cases or in any particular circumstances, it shall not be necessary for the Commission to be consulted.

(3) Nothing in sub-section (2) shall require the Commission to be consulted as respects the manner in which a provision may be made by the State for the reservation of appointments or posts in favour of any class of permanent residents which is in the opinion of the Government is not adequately represented in the services under the State.

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(4) All regulations made under the proviso to sub-section (2) by the Sadar-i-Riyasat shall be laid for not less than fourteen days before each House of the Legislature as soon as possible after they are made, and shall be subject to such modifications, whether by way of repeal or amendment, as both Houses may make during the session in which they are so laid.

Acting appointment of Chairman or the Commission :

134. If the office of Chairman of the Commission becomes vacant or if the Chairman is by reason of absence or for any other reason unable to perform the duties of his office, those duties shall until some person appointed under sub-section (1) of section 129 to the vacant office has entered on the duties thereof, or, as the case may be, until the Chairman has resumed his duties, be performed by such one of the other members of the Commission as the Sadar-i-Riyasat may appoint for the purpose.

Power to extend functions of the Commission :

135. An Act made by the Legislature may provide for the exercise of additional functions by the Commission as respects the services of the State and also as respects the services of any local authority or other body corporate constituted by law or of any public institution.

Expenses of the Commission :

136. The expenses of the Commission, including any salaries allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the consolidated Fund of the State.

Reports of the Commission :

137. It shall be the duty of the Commission to present annually to the Sadar-i-Riyasat a report as to the work done by the Commission and the Sadar-i-Riyasat, on receipt of such report, shall cause a copy thereof together with a memorandum explaining, as respects the cases, if any, where the advice of the Commission was not accepted, the reasons for such non-acceptance to be laid before the Legislature.

PART X
ELECTIONS

Superintendence, direction and control of elections :

136. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, the elections held under Part VI shall be vested in an Election Commissioner to be appointed by the Sadar-i-Riyasat.

(2) The Sadar-i-Riyasat may, for such period as he may deem necessary, appoint one or more Deputy Election Commissioners to assist the Election Commissioner in the performance of the functions conferred by sub-section (1).

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(3) Subject to the provisions of any law made by the Legislature, the conditions of service of the Election Commissioner and the Deputy Election Commissioner shall be such as the Sadar-i-Riyasat may by order specify.

(4) The Sadar-i-Riyasat may make available to the Election Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commissioner by sub-section (1).

No person to be ineligible for inclusion in electoral Roll on grounds of religion, race, caste or sex :

139. There shall be one general electoral roll for every territorial constituency for a election to either House of the Legislature and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.

Elections to the Legislative Assembly to be on the basis of adult suffrage :

140. The elections to the Legislative Assembly shall be on the basis of adult suffrage ; that is to any, every person who is a permanent resident of the State and who is not less than twenty one years of age on such date as may be fixed in that behalf by or under any law made by the Legislature and is not otherwise disqualified under this Constitution or any law made by the Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.

Power of Legislature to make provision with respect to elections to Legislature :

141. Subject to the provisions of this Constitution, the Legislature may from time to time by law make provision with respect to all matters relating to, or in connection with elections to either House of the Legislature, including the preparation of electoral rolls, the delimitation of constituencies, appointment of election tribunals and all other matters necessary for securing the due Constitution of the two Houses.

Bar to interference by Courts in electoral matters :

142. Notwithstanding anything in this Constitution –

(*a*) the validity of any law relating to the delimitation of territorial constituencies for the purpose of electing members of the Legislative Assembly or the allotment of seats to such constituencies make or purporting to be made under section 141, shall not be called in question in any Court ;

(*b*) no election to either House of the Legislature shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the Legislature

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PART XI
MISCELLANEOUS PROVISIONS

Protection of Sadar-i-Riyasat :

143. (1) The Sadar-i-Riyasat shall not be answerable to any Court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of these powers and duties :

Provided that nothing in this sub-section shall be construed as restricting the right of any person to bring appropriate proceedings against the Government.

(2) No criminal proceedings shall be instituted or continued against the Sadar-i-Riyasat in any Court during his term of office.

(3) No process for the arrest or imprisonment of the Sadar-i-Riyasat shall issue from any Court during his term of office.

(4) No civil proceedings in which relief is claimed against the Sadar-i-Riyasat shall be instituted during his term of office in any Court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as Sadar-i-Riyasat., until the expiration of two months next after notice in writing has been delivered to the Sadar-i-Riyasat or left at his office stating the nature of the proceedings, the cause of action therefore, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

Flag of the State :

144. The Flag of the State shall be rectangular in shape and red in colour with three equidistant white vertical stripes of equal width next to the staff and a white plough in the middle with the handle facing the stripes.

The ratio of the length of the flag to its width shall be 3 : 3.

Official language of the State :

145. The official language of the State shall be Urdu, but the English language shall, unless the Legislature by law otherwise provides, continue to be used for all the official purposes of the State for which it was being used immediately before the commencement of this Constitution.

Academy for development of Art, culture and Languages :

146. The Sadar-i-Riyasat shall, as soon as may be after the commencement of the Constitution, establish an Academy of Arts, Culture and Languages where opportunities will be afforded for the development of Art and Culture of the State and for the development of Hindi, Urdu and other regional languages of the State specified in the Sixth Schedule.

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PART XII
AMENDMENT OF THE CONSTITUTION

Amendment of the Constitution :

147. An amendment of this Constitution may be initated only by the introduction of a Bill for the purpose in the Legislative Assembly, and when the Bill is passed in each House by a majority of not less than two-thirds of the total membership of that House, it shall be presented to the Sadar-i-Riyasat for his assent and, upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bills :

Provided that no Bill or amendment seeking to make any change in :

(*a*) this section ; or

(*b*) the provisions of sections 3 and 5 or

(*c*) the provisions of the Constitution of India as applicable in relation to the State shall be introduced or moved in either House of the Legislature.

PART XIII
TRANSITIONAL PROVISIONS

Provisions as to Sadar-i-Riyasat :

148. The person holding the office of Sadar-i-Riyasat immediately before the commencement of this Constitution shall on such commencement, continue to be the Sadar-i-Riyasat and hold that office until the first Legislative Assembly has been constituted under the provisions of Part VI and the person elected by that Assembly and recognized by the President as the Sadar-i-Riyasat enters upon his office.

Council of Ministers of the Sadar-i-Riyasat :

149. The Council of Ministers and the Deputy Ministers in office immediately before the commencement of this Constitution shall, on such commencement, be deemed to be, the Council of Ministers and the Deputy Ministers, respectively duly appointed by the Sadar-i-Riyasat under this Constitution.

Provision as to Provisional Legislature :

150. (1) Until both Houses of the Legislature have been duly continued and summoned to meet for the first session under the provisions of this Constitution, the Sadar-i-Riyasat and the body functioning as the constituent Assembly for the State immediately before the commencement of this Constitution shall be the provisional Legislature and shall exercise all the powers and perform all the duties conferred by the Provisions of this Constitution on Legislature.

(2) Any person holding office immediately before the commencement of this Constitution as Speaker or Deputy Speaker of the Constituent Assembly when functioning as Legislative Assembly under the Jammu and Kashmir Constitution Act, 1996, shall, on such commencement, be the Speaker or, as the case may be, the Deputy Speaker of the Provisional Legislature.

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Provision as to pending Bills :

151. A Bill which immediately before the commencement of this Constitution was pending in the Constituent Assembly functioning the Legislative Assembly under the Jammu and Kashmir Constitution act, 1996, may subject to any provision to the contrary which may be included in rules made by Provisional Legislature, be continued in that Legislature as if the proceedings taken with reference to the Bill in the Constituent Assembly so pending, had been taken in that Legislature.

Special provision for constituting the first Legislative Assembly :

152. (1) For the purpose of constituting the first Legislative Assembly under this Constitution, the Sadar-i-Riyasat shall by order provide :

(*a*) for determining the number of seats required to be reserved in the Legislative Assembly for the Scheduled Castes in the State under section 49 ; and

(*b*) for combining such number of the existing constituent Assembly constituencies as may be necessary in order to provide constituencies electing to the Legislative Assembly two members each, one of whom shall be a member of the Scheduled Castes ;

and notwithstanding anything contained in sections 47 and 49 the existing Constituent Assembly constituencies so modified shall be the territorial constituencies for electing members to be first Legislative Assembly.

(2) In this section, the expression 'existing Constituent Assembly constituencies' means the constituencies specified in the notification dated 7th August 1951 and the subsequent order dated 5th September 1951, published in the Government Gazette dated 9th August, 1951, and 5th September, 1951 respectively.

Provision as to Judges of High Court :

153. Notwithstanding anything in section 96 the Judges of the High Court holding office immediately before the commencement of this Constitution, shall, unless they have elected otherwise, become on such commencement the Judges of the High Court under this Constitution and shall there upon be entitled to such salaries and allowances and to such rights in respect of leave of absence and pension as are provided for under section 98 in respect of the Judges of the High Court.

Courts, authorities and officers to continue to function subject to the provisions of the Constitution :

154. All Courts of civil, criminal and revenue jurisdiction all authorities and all officers, judicial, executive and ministerial, throughout the territory of the State, shall exercise their respective functions subject to the provisions of this Constitution.

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Moneys received or raised or expenditure incurred between the commencement of the Constitution and the 31st day of March, 1957 :

155. The provisions of this Constitution relating to the consolidated Fund of the State and the appropriation of moneys out of the same shall not apply in relation to moneys received or raised or expenditure incurred by the Government between the commencement of this Constitution and the thirty-first day of March 1957, both days inclusive, and any expenditure incurred during that period shall be deemed to be duly authorised if the expenditure was specified in the sanctioned estimate for 1956-57 or is authorised by the Sadar-i-Riyasat in accordance with such rules as were applicable to the authorization of expenditure from the revenues of the State immediately before such commencement.

Power of Sadar-i-Riyasat to remove difficulties :

156. (1) The Sadar-i-Riyasat may for the purpose of removing any difficulties, particularly in relation to the transition from the provision of the Jammu and Kashmir Constitution Act, 1996, to the provisions of this Constitution by order direct that this Constitution shall, during such period as may be specified in order have effect subject to such adaptations, whether by way of modification, addition or omission, as he may deem to be necessary or expedient.

Provided that no such order shall be made after the first meeting of the two Houses of the Legislature after their due Constitution under the provisions of Part VI.

(2) Every order made under sub-section (1) shall be laid before the Provisional Legislature, or the newly constituted Legislature, as the case may be.

Repeal and saving of laws and rules :

157. (1) The Jammu and Kashmir Constitution Act, 1996, (XIV of 1996) is hereby repealed.

(2) Notwithstanding the repeal of the said act but subject to the other provisions of this Constitution, all the laws in force in the State immediately before the commencement of this Constitution shall continue in force until altered or repealed or amended by competent authority.

(3) All notifications published, proclamations issued, powers conferred, jurisdiction tested, forms prescribed, local limits defined, and orders, rules and appointments made under any regulations, order, law of rule, in force immediately before the coming into operation of this Constitution and which are not inconsistent with any of the provisions of this Constitution, shall be deemed to have been respectively published, issued, conferred vested,

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prescribed, defined and made under this Constitution and shall remain in force until repealed or modified either expressly or by implication by competent authority.

Interpretation:

158. Unless the context otherwise requires, the General Clauses Act S. 1977, shall apply for the interpretation of this Constitution as it applies for the interpretation of an act of the State Legislature.

Sd. G.L. Dogra	... Chairman	Sd. Mr. Qasim	... Member – Secretary
Sd. G.R. Renzu	... Member	Sd.Harbans Singh Azad	... Member
Sd. D.P. Dhar	... Member	Sd. Ghulam Nabi Wani	... Member
Sd. Asadullah Mir	... Member		

First Schedule

(See Section 27)

Method of Election to the office of the Sadar-i-Riyasat :

1. When election to the office of the Sadar-i-Riyasat becomes necessary, the Speaker of the Legislative Assembly shall fix time and date for the holding of the election and shall cause a notice thereof to be sent of every member.

2. At any time before noon on the date preceding the date so fixed, any member of the Legislative Assembly may nominate another person for election by delivering to the Speaker or any officer authorised by the Speaker in this behalf, a nomination paper in the form prescribed in the annexure to this Schedule signed by himself as propos and by another member as seconder.

3. Any person who has been so nominated may withdraw his candidature in writing addressed to the Speaker at any time before the Assembly proceeds to hold the election.

4. At the time fixed for election under para 1, the Speaker or in his absence the person presiding shall read out to the Assembly the names of the persons who have been duly nominate and have not withdrawn their candidature together with those of their proposers and seconders, and , if there is only one such candidate, shall declare him to be duly elected. If there is more than one such candidate the Assembly shall proceed to elect the Sadar-i-Riyasat by ballot.

5. Where there are only two candidates for election, the candidate who obtains at the ballot the larger number of votes shall be declared elected. If they obtain an equal number of votes, the speaker or in his absence the person presiding shall exercise his casting vote and the person in whose favour such vote is cast shall be declared elected.

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6. Where more than two candidates have been nominated and at the first ballot no candidate obtains more votes than aggregate votes obtained by the other candidates, the candidate who has obtained the smallest number of votes shall be excluded from the election, and balloting shall proceed, the candidate obtaining the smallest number of votes at each ballot being excluded from the election, until one candidate obtains more votes than the remaining candidate or than the aggregate votes of the remaining candidates, as the case may be, and such candidate shall be declared elected.

7. Where at any ballot any of three or more candidates obtain an equal number of votes and one of them has to be excluded from the election under para 6, the determination, as between the candidates whose votes are equal, of the candidate who is to be excluded shall be by the casting vote of the speaker or in his absence of the person presiding.

8. The Prime Minister of the State shall communicate the name of the person duly elected by the Assembly as the Sadar-i-Riyasat to the President of India for being recognized as the Sadar-i-Riyasat.

ANNEXURE OF THE SCHEDULE

Nomination Paper

Election to the office of the Sadar-i-Riyasat.

We hereby nominate .....

(Full name and address of the candidate).....

as a candidate for election to the office of the Sadar-i-Riyasat. Jammu and Kashmir.

We have verified, and do hereby declare, that the said candidate is eligible for election of the Sadar-i-Riyasat under the provisions of the Constitution of Jammu and Kashmir.

Signature of Proposer .....

Name of Constituency .....

Date .....

Signature of Seconder .....

Name of Constituency .....

I assent to this nomination,

Signature of candidate .....

Date .....

Second Schedule

(See Section 30)

Emoluments, allowances and privileges of the Sadar-i-Riyasat :

1. *Emoluments* : The emoluments of the Sadar-i-Riyasat shall be Rs. 5,500/- per mensem.

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2. *Allowances* : In order that the Sadar-i-Riyasat may be enabled to discharge conveniently and with dignity the duties of his office there shall also be paid in cash each year for each of the purposes specified below such amount, not exceeding the maximum amount provided here under, as may be required by the Sadar-i-Riyasat :–

		Maximum amount provided
(*i*)	Sumptuary allowance	Rs. 15,000/-
(*ii*)	Staff and Household	Rs. 75,000/-
(*iii*)	Tour expenses	Rs. 10,000/-
(*iv*)	Allowances for miscellaneous expenses	Rs. 9,000/-
		Total Rs. 109,000/

Note : The grants specified above shall be operated upon in consultation with the Government.

3. The Sadar-i-Riyasat may in case of necessity in consultation with the Government sanction re-appropriations in respect of the grants specified in para 2.

4. (1) The Sadar-i-Riyasat shall, throughout his terms of office, be entitled without payment of rent on hire, to the use of his furnished official residence and of motor vehicles specified in the sub-joined table and the maintenance of such residences and motor vehicles shall be at the State expenses.

(2) The items specified in the sub-joined table may be varied or amended by the Sadar-i-Riyasat with the concurrence of the Government.

Explanation : For the purposes of this order :

(*a*) 'Official residence' means the official residences to be specified by the Government by notification and include the staff quarters and other buildings appurtenant thereto and the gradens thereof ;

(*b*) maintenance in respect of motor vehicles specified in the sub-joined table would include pay and allowances of chauffeurs and the provision of all oil and petrol.

5. There shall be paid to the Sadar-i-Riyasat, in connection with his assumption of office, an allowance equal to his actual expenses in travelling, with his family, if any, and his family effects, to take up his duties, and a similar allowance on his vacating the office to return to the place where he ordinarily resided at the time of his appointment.

6. The Sadar-i-Riyasat shall be entitled to the free supply of water and electricity for his domestic use.

7. All motor vehicles specified in the table and any private car owned or maintained by the Sadar-i-Riyasat shall be exempt from payment of any toll or tax leviable under any statue or bye-law.

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8. The Sadar-i-Riyasat, any member of his family and the staff accompanying him shall be entitled to stay free of rent in any Dak Banglow or Rest House maintained by the Government.

Table

Motor Cars	two
Jeeps	one
Station Wagon	one
Motor Cycle	one

Third Schedule

(See Section 63)

Salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and the Chairman and the Deputy Chairman of the Legislative Council.

1. There shall be paid to the Speaker of the Legislative Assembly and the Chairman of the Legislative Council such salaries and allowances as are payable to a Minister of the State Government under the Law for the time being in force.

2. There shall be paid to the Deputy Speaker of the Legislative Assembly and the Deputy Chairman of the Legislative Council such salaries and allowances as the Sadar-i-Riyasat may determine.

Fourth Schedule

(See Section 98)

Salaries and Allowances of the Judges of the High Court :

1. There shall be paid to the Chief Justice and Judges of the High Court, in respect of time spent on actual service, salary at the following rates per mensem, that is to say :

The Chief Justice	...	Rs. 2500/-
Any other Judge	...	Rs. 2000/-

provided that if a Judge of the High Court at the time of his appointment is in receipt of a pension in respect of any previous service rendered by him his salary in respect of service in the State High Court shall be reduced by the amount of that pension.

2. Every Judge of the High Court shall receive such reasonable allowances to re-imburse him for expenses incurred in travelling on duty within the territory of the State and shall be afforded such reasonable facilities in connection with travelling as the Sadar-i-Riyasat may from time to time prescribe.

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3. The rights in respect of leave of absence (including leave allowances) and pension of the Judges of the High Court shall be governed by the provisions which immediately before the commencement of this Constitution, were applicable to the Judges of the State High Court.

4. In this part, unless the context otherwise requires :-

(*a*) the expression 'Chief Justice' includes an acting Chief Justice, and a 'Judge' includes an acting Judge ;

(*b*) 'actual service' includes –

(*i*) time spent by a Judge on duty as a Judge or in the performance of such other functions as he may at the request of the Sadar-i-Riyasat undertake to discharge ; and

(*ii*) vacations, excluding any time during which Judge is absent on leave.

Fifth Schedule

(See Sections 40, 64, and 97)

Forms of Oaths or Affirmations

...

Oath for Ministers

Form A

'I, A., B., do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of the State as by law established, that I will faithfully and conscientiously discharge the duty upon which I am about to enter, and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

'I further do swear in the name of God/solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Minister for the State except as may be required for the due discharge of my duties as such Minister.'

Form B

Oath for Deputy Minister

'I, A, B., do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the Constitution of the State as by law established, that I will faithfully and conscientiously discharge the duty upon which I am about to enter, and that I will do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

'I further do swear in the name of God/solemnly affirm that I will not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration or shall become known to me as a Deputy Minister for the State except as may be required for the due discharge of my duties as such Minister.'

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Form C

Oath or affirmation to be made by a member of the Legislature

'I. A., B., having been elected (or nominated) a member of the Legislative Assembly (or Legislative Council), do swear in he name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of the State as by law established and that I will faithfully discharge the duty upon which I am about to enter'.

Form D

Oath or affimation to be made by the Judges of a High Court

'I, A., B., having been appointed Chief Justice (or a Judge) of the High Court of Jammu and Kashmir do swear in the name of God solemnly affirm that I will bear true faith and allegiance to the Constitution of the State as by law established, that I will duly and failthfully and to the best of my ability, knowledge and Judgement perform the duties of my office without fear or favour, affection or illwill and that I will uphold the Constitution and the laws.'

Sixth Schedule

(See Section 146)

Regional Languages

1. Kashmiri
2. Dogri
3. Balti (Pali)
4. Dardi
5. Punjabi
6. Pahari
7. Ladakhi

Jammu and Kashmir Constituent Assembly

* * *

Errata to the Draft Constitution of Jammu and Kashmir as Introduced in the Constituent Assembly

Page	Section	Line	For	Read
4	6(2)	3	First	first
6	15	1, 2	Agriculture and Animal Husbandry	agriculture and animal husbandry
7	19(*a*)	1	Right	right
	19(*c*)	2	expenses	expense
8	24	2	hygiene	hygiene
10	30(1)	2 & 3		omit 'the' wherever occuring
11	35(2)	2	sections ...	sections 36, 38 and 92.
	37(2)	2		omit the wherever occuring

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12	41	7	Rule	Rules
	42(2)	2	Give	give
15	49(2) (poviso)	1	effect	affect
16	50(1) (*a*)	1	Municipal Committee	Municipal Council
	(*b*)	1	Municipal Committee	Municipal Council
	(*c*) & (*d*)	2	recognised eductaonal institutions	educational institution recognised by the Government
	(5) (*a*) & (*b*)	1	Panchayat	Panchayats
17	53(2) (*a*)	1	Prorogue	prorogue
20	61 (2)	1	the sections	sections
	62 marginal heading		Speaker	Speaker
22	68 (2)	2	Speaker or	Speaker
23	70(1)	3	Veing	being
25	75(1)	9	The Legislature	the Legilsature
26	75(2) (*c*)	10	The Bill	the Bill
28	78(Pro)	6	introducing	introducing
	79(1)	4	part	Part
29	79(3) (*c*)	7	debit	debt
30	81(1)	4	Statde	State
32	83(1) (*b*)	3	magnitude	magnitude
	84(1)	3	provisions	Povision
33	85(3)	4	communication	communications
34	86	10	of standing	or standing
35	91(2)	4	ordinance	Ordinance
38	101(1)	3	at Jammu and at Srinagar	Jammu and Srinagar
	101(2)	?	and Srinagar	and at Srinagar
48	131	?	be	by
	132	?	a Chairman	Chairman
49	134	?	any such chairman	the Chairman
53	149(*b*)	?	3 and 5	3 and 5
	149(*c*)	?	th	the
58	Schedule 1st (para 2)	?	proceding proposer	preceding
61	2nd (para 4(*b*))	?	provisions	povision
63	4th (para 1)	?	Judges	judges
	para (4)	?	part	Part
	(*b*) II		Judge	the Judge

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APPENDIX XXV

STATEMENT OF THE SITTINGS OF THE J&K CONSTITUENT ASSEMBLY FROM ITS INCEPTION TO THE DATE OF THE FINALISING SESSION

No.	Date	Month
	1st Session *i.e.*, (Vol. I)	
1.	31.10.1951	Oct.
2.	01.11.1951	Nov.
3.	05.11.1951	Nov.
4.	06.11.1951	Nov.
5.	07.11.1951	Nov.
	2nd Session *i.e.*, (Vol. II)	
1.	24.03.1952	March
2.	25.03.1952	March
3.	27.03.1952	March
4.	29.03.1952	March
5.	31.03.1952	March
	3rd Session *i.e.*, (Vol. III)	
1.	07.06.1952	June
2.	10.06.1952	June
3.	11.06.1952	June
4.	12.06.1952	June
	4th Session *i.e.*, (Vol. IV)	
1.	11.08.1952	August
2.	14.08.1952	August
3.	19.08.1952	August
4.	20.08.1952	August
5.	21.08.1952	August
	5th Session *i.e.*, (Vol. V)	
1.	10.11.1952	Nov.
2.	12.11.1952	Nov.
3.	18.11.1952	Nov.
4.	19.11.1952	Nov.
	6th Session *i.e.*, (Vol. VI)	
1.	10.04.1953	April
2.	14.04.1953	April

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	7th Session *i.e.*, (Vol. VII)	
1.	05.10.1953	October
2.	20.10.1953	October
	8th Session *i.e.*, (Vol. VIII)	
1.	03.02.1954	Feb.
2.	04.02.1954	Feb.
3.	05.02.1954	Feb.
4.	06.02.1954	Feb.
5.	11.02.1954	Feb.
6.	13.02.1954	Feb.
7.	15.02.1954	Feb.
	9th Session *i.e.*, (Vol. IX)	
1.	16.04.1954	April
	10th Session *i.e.*, (Vol. X)	
1.	29.03.1955	March
2.	06.04.1955	-de-
	11th Session *i.e.*, (Vol. XI)	
1.	31.03.1956	March
	12th Session *i.e.*, (Vol. VII)	
1.	29.09.1956	Sept.
2.	10.10.1956	Oct.
3.	22.10.1956	Oct.
4.	23.10.1956	Oct.
5.	24.10.1956	Oct.
6.	25.10.1956	Oct.
7.	29.10.1956	Oct.
8.	30.10.1956	Oct.
9.	31.10.1956	Oct.
10.	01.11.1956	Nov.
11.	03.11.1956	Nov.
12.	05.11.1956	Nov.
13.	06.11.1956	Nov.
14.	07.11.1956	Nov.
15.	08.11.1956	Nov.
16.	10.11.1956	Nov.
17.	14.11.1956	Nov.
18.	15.11.1956	Nov.
19.	17.11.1956	Nov.
20.	19.11.1956	Nov.
	13th Session *i.e.*, (Vol. XIII)	
1.	25.01.1957	January

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BIBLIOGRAPHY

The Jammu and Kashmir's Constituent Assembly Debates

C.A. Deb., Vol. I, No. 1
C.A. Deb., Vol. I, No. 2
C.A. Deb., Vol. I, No. 3
C.A. Deb., Vol. I, No. 4
C.A. Deb., Vol. I, No. 5
C.A. Deb., Vol. II, No. 1
C.A. Deb., Vol. II, No. 2
C.A. Deb., Vol. II, No. 3
C.A. Deb., Vol. II, No. 4
C.A. Deb., Vol. II, No. 5
C.A. Deb., Vol. III, No. 1
C.A. Deb., Vol. III, No. 2
C.A. Deb., Vol. III, No. 3
C.A. Deb., Vol. III, No. 4
C.A. Deb., Vol. IV, No. 1
C.A. Deb., Vol. IV, No. 2
C.A. Deb., Vol. IV, No. 3
C.A. Deb., Vol. IV, No. 4
C.A. Deb., Vol. IV, No. 5
C.A. Deb., Vol. V, No. 1
C.A. Deb., Vol. V, No. 2
C.A. Deb., Vol. V, No. 3
C.A. Deb., Vol. V, No. 4
C.A. Deb., Vol. VI, No. 1
C.A. Deb., Vol. VI, No. 2
C.A. Deb., Vol. VII, No. 1
C.A. Deb., Vol. VII, No. 2
C.A. Deb., Vol. VIII, No. 1
C.A. Deb., Vol. VIII, No. 2
C.A. Deb., Vol. VIII, No. 3
C.A. Deb., Vol. VIII, No. 4
C.A. Deb., Vol. VIII, No. 5
C.A. Deb., Vol. VIII, No. 6
C.A. Deb., Vol. VIII, No. 7

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C.A. Deb., Vol. IX, No. 1
C.A. Deb., Vol. X, No. 1
C.A. Deb., Vol. X, No. 2
C.A. Deb., Vol. XI, No. 1
C.A. Deb., Vol. XII, No. 1
C.A. Deb., Vol. XII, No. 2
C.A. Deb., Vol. XII, No. 3
C.A. Deb., Vol. XII, No. 4
C.A. Deb., Vol. XII, No. 5
C.A. Deb., Vol. XII, No. 6
C.A. Deb., Vol. XII, No. 7
C.A. Deb., Vol. XII, No. 8
C.A. Deb., Vol. XII, No. 9
C.A. Deb., Vol. XII, No. 10
C.A. Deb., Vol. XII, No. 11
C.A. Deb., Vol. XII, No. 12
C.A. Deb., Vol. XII, No. 13
C.A. Deb., Vol. XII, No. 14
C.A. Deb., Vol. XII, No. 15
C.A. Deb., Vol. XII, No. 16
C.A. Deb., Vol. XII, No. 17
C.A. Deb., Vol. XII, No. 18
C.A. Deb., Vol. XII, No. 19
C.A. Deb., Vol. XII, No. 20
C.A. Deb., Vol. XIII, No. 1

The Constituent Assembly Debates of India

C.A. Deb., Vol. X, No. 10

Parliamentary Debates (House of People) 1952, Part II, Vol. IV, No. 8.

Hansord's Parliamentary Debates, July 3rd, 1890.

Census Reports

Census of India 1891, Vol. XXVIII. The Jammu & Kashmir, Lahore.

Census of India 1911, Vol. XX, Kashmir Part I, 1912.

Census of India 1931, Vol. XXIV, Jammu & Kashmir, Part I & II, Jammu 1941.

Census of India 1968.

Census of India 1971.

Constitutions

The Constitution of Jammu & Kashmir State Council and Rules of Business, 28th Nov., 1925.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2025-Grant

Gandhi Memorial College Of Education Bantalab Jammu

The Constitution Act (Regulation) of Svt. 1991 Constitution.

The Jammu & Kashmir Constitution Act No. XIV of 1996. (1939 A.D.) Jammu & Kashmir High Court Constitution 1928.

The Constitution of Jammu & Kashmir, J&K C.A., Srinagar, 19th Nov., 1956.

The Constitution of France, 1958.

The Constitution (Application to Jammu & Kashmir) Order, 1954.

The Draft Constitution of Jammu & Kashmir State.

Jammu & Kashmir papers relating to Constitutional Reforms (Confidential) J & K Govt., 1939.

Correspondences (Official)

Foreign Department External E. No. 283 Proceeding, Dec. 1885.

Foreign Department Secretariate E. No. 73 Proceeding, Dec. 1886.

Foreign Secretary to Resident, 25th July, 1888.

Mr. M.A. Beg & Rai Bahadur R.C. Kak-P.M. Correspondence National Conference, 1946.

Sheikh-Sadiq-Correspondence, (August to Oct. 1956) Mridula Sarabhai, 81/48 Chanakyapuri, New Delhi, year not mentioned.

Nehru-Mukherji-Abdulllah Correspondence, Information Officer, New Delhi, 1953.

J & K Govt. Gazettes

Jammu & Kashmir Govt. Gazette, March 1948

Jammu & Kashmir Govt. Gazette Extraordinary, May 1951.

Jammu & Kashmir Govt. Gazette, (Extraordinary) 9th Aug., 1951

Instrument of Accession

The Instrument of Accession of 1947.

Declarations

The letters patent granted by H.H. The Maharaja Hari Singh Ji Bahadur on the 28th August, 1943.

Letters

A letter sent to Prime Minister of the State, Dy. P.M., P.M. of India & Indian Minister of States by Pt. P.N. Dogra, p.p. old files.

Letter written by Pt. P.N. Dogra to Shri J.L. Nehru dated 22nd May, 1952, p.p. old files.

Maharaja to Mountbatten Letter of 28th Oct,. 1947.

Memorandum & Memorials

20 Points Memorandum submitted to the President of India by Pt. P.N. Dogra, 19th June, 1952.

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Gandhi Memorial College Of Education Bantalab Jammu

The National Conference's Memorandum to Cabinet Mission, People's Age, Bombay, June 2nd, 1946.

Memorandum on 'Cashmir' and some Adjacent Countries by Charles Girdles Resident in Kashmir 1971, Calcutta Foreign Deptt.

Memorials presented by J & K Muslim and H.H.'s reply thereto, 19th Oct, 1931, Srinagar.

Memorial presented by the Kashmiri Pandits & H.H.'s reply thereto, 24th Oct., 1931, Srinagar.

Memorial of Hindus of different shades of opinions of the J & K States and H.H.'s reply thereto, 29st Oct., 1931, Srinagar.

Address presented by the Rajputs and H.H.'s reply thereto 21st Oct., 1931, Srinagar.

The State Buddhist representation 1st Magar 1999 (30th Nov., 1931), Srinagar.

Memorandum, Judicial Deptt. of J & K Govt., Old English Record file 188/N-dated 1910, Jammu Archive.

Memorandum, submitted to His Excellency The President of Indian Union on 1-4-1954 by Pt. Prem Nath Dogra.

Memorandum, submitted to Enquiry Commission. Pt. Anant Ram Shastri, General Secretary Dogra Mandal, J & K State, March, 1968.

Notifications

The State Subject definition Notification No. 1-L/84 dated the 28th April, 1927.

Notification issued by Shiv Ram Saraf, Secretary to H.H. Govt., Praja Sabha Deptt., dt, 9th Sept., 1943.

Election Commissioner Jammu & Kashmir Notification No. E.C. 7 dt. 6-9-1951.

Presidential Addresses

Pt. J.L. Nehru's Presidential Address, All India State People's Conference, Ludhiana, Feb. 1939.

Deendayal Upadhaya, Presidential Address, Calicut, Dec. 1967.

Press Note

The Press Note issued by J & K Govt. on 9-2-1952.

Proclamations

Proclamation of Shriman Indar Mahinder Raj Rajeshwar Maharaja Shri Hari Singh Ruler of Jammu & Kashmir & dependencies Jammu, March 5, 1948.

H.H. Hari Singh Proclamation, dt. 11-2-1939.

Proclamation by the Queen in Council to Princes, Chiefs and People of India, Ist Nov., 1858.

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Gandhi Memorial College Of Education Bantalab Jammu

Regulations

The Jammu and Kashmir State Civil Courts Regulations, 1877.

Rules

Jammu and Kashmir Constituent Assembly Elections (Part I & II) Rules, 2008, 1951.

Resolutions

Resolution adopted by W.C. of the All J & K Praja Parished on 22nd Sept., 1951, p.p. old files.

The Resolution of the Working Committee of Akhil Bharatiya Hindu Maha Sabha, 1952.

Resolution issued by the President Shri Khashatriya Prantik Sabha Jammu Tawi, p.p. old files, 1952.

Constituent Assembly of Jammu and Kashmir Resolution adopted by the General Council of the All J & K National Conference on 27th Oct., 1950.

Representation

The Representation Submitted to Hon'ble N.G. Ayyangar by Dogri Sanstha p.p. old files.

Broadcasts

Broadcast of Diwan Chaman Lal on All India Radio, Bombay, 1-1-1951.

Acts

Appeal to His Highness Act XIV of 1996, J & K Govt.

Reports and Digest of Statistics

Sub-Committee (of Basic Principles Committee) Report, Jan. 1954.

Sub-Committee of Advisory Committee on Fundamental Rights and Citizenship Report, 25 January, 1954.

A Note on the Jammu & Kashmir State, J & K Govt., 1928.

Administration Report of Jammu & Kashmir 1958-59, J & K Govt., 1960.

Report of Agricultural Census 1970-71, J & K State Agriculture Census Commission.

Report of Land Commission, J & K Govt., 1968.

Report on the Administration of Jammu and Kashmir from Svt. 1889-90, Jammu, 1891.

The Annual Administration on Report J & K State for Samvat 1977-79 (1920-23) Jammu, 1924.

Wazir Ganga Ram Report on the Administration, J & K State, 1943.

A Note on Jammu & Kashmir State, J & K Govt., 1947.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2025-Grant

Gandhi Memorial College Of Education Bantalab Jammu

The Annual Administration Report J & K for Samvat 1969 (1912-13), Jammu, 1915.

The Annual Administration Report of Jammu and Kashmir for S-1970 (1913-14), Jammu, 1917.

The Annual Administration Report for Svt.-1972 (1915-16), Jammu, 1918.

The Annual Administration Report of J & K for Svt.-1973 (1916-17), Jammu, 1919.

The Annual Administration Report of J & K for S-1974 (1918-19), Lahore/Jammu, 1923.

Report of the Committee appointed to define the term State-Subject. J & K Govt., year not mentioned.

A Brief Note on the Administration of J & K State for the year 1931, J & K Govt., 1932.

Report of the Commission appointed under the order of H.H. the Maharaja Bahudar dt. 12th Nov., 1831 to enquire into the grievances and complaints, Jammu, 1933.

Orders on the Recommendations contained in the Galancy Commission Report, H.H. Govt. of J & K, Jammu, 1933.

Report of the Kashmir Constitution Reform Conference, H.H. Govt., J & K, 1932.

Report of the Franchise Commission, H.H. Govt., J & K, 1934.

Annual Administration Report (General) J & K State for 1995-96 (Oct. 1938-Oct. 1939), J & K Govt.

Jammu & Kashmir Administration Report Svt.-1961 (1904 A.D.), J & K Govt.

Modern Jammu & Kashmir 1935-43, J & K Govt., 1944.

Jammu & Kashmir 1939-40, H.H. Govt., Jammu, 1941.

The Jammu & Kashmir Law Report, Vol. 1, Part X, Svt-1999 Poh (Dec.-January, 1942-43).

Annual Administration Report (General) for J & K State Svt.-2000, H.H. Govt.

Kashmir Challenge and Response

A report laid by Pt. P.N. Bazar at the inaugular session of J & K peoples convention held at Srinagar in 1968.

Digest of Statistics 1973-74.

Director of Evaluation & Statistics, J & K Govt., planning and development department.

Digest of Statistics 1975.

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Gandhi Memorial College Of Education Bantalab Jammu

Director of Evaluation and Statistics, planning and development department, J & K Govt., 1975.

Statements

A Statement issued to the press by Pt. Prem Nath Dogra at a Press Conference held in New Delhi on 6th Oct. 1951.

A Statement issued to press by Maulana Mohd. Sayeed in 1951, Praja Parishad, p.p. old files.

Pt. P.N. Dogra Statement issued on 12-4-1952.

The Joint Statement issued by 7 members of Indian Parliament, 1952.

Sh. H.V. Kamath's Statement in Indian Parliament on Jammu affairs on 3rd March, 1952.

A Statement of D.D. Verma, G. Secretary, The All J & K p.p., 25-6-1953.

A Statement issued by the All J & K National Conference Working Committee on the 24th May, 1941. Mujahid Manzil, Srinagar.

The National Demand, 1938.

M.M. Sayed from Mujahid Manzil.

Unpublished Dissertations And Thesis

M.A. & M. Phil Dissertations

Enusnan, Indu : The Govt. and Administration in J & K, Lucknow University, 1942.

Chander, Prakash : Factional Polices in Jammu and Kashmir : A case Study of Factional Behaviour in the Ruling Party of the State. June, 1977.

Bala Renu : Regional Political Parties And Constitutional Development of Jammu & Kashmir : A Study of Praja Parishad, University of Jammu, Jammu, 1990.

Kumar, Rakesh : Politics of Land Reforms in Jammu & Kashmir, University of Jammu, Jammu, 1990.

Kumar Raj : The Punjab Crisis And Congress Party, University of Jammu, Jammu, 1990.

Kumar Ashutosh : Regional Imbalances and Demand For Regional Autonomy in Jammu & Kashmir, University of Jammu, 1986.

Magrey, Zerina Bano : Eighth Parliamentary Elections in Jammu & Kashmir (A Case Study of Jammu Constituency), University of Jammu, Jammu, 1986.

Rama, Manju : Centre-State Relations : Irritation And Tension : A Study of Jammu & Kashmir Since 1975, University of Jammu, Jammu, 1989.

Rissarth, Ravinder, Singh : Janata Party – Its Emergence And Electoral Performance in Jammu & Kashmir, University of Jammu, 1981.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2025-Grant

Gandhi Memorial College Of Education Bantalab Jammu

Sharma, Sawtantar : Sheikh Mohammad Abdullah : Leadership Style And Leadership Behaviour, University of Jammu, 1983.

Talwar, Neena : Eighth Legislative Assembly Elections in Jammu & Kashmir, University of Jammu, Jammu, 1989.

Ph. D. Thesis

Anand, Adarsh Sain : The Development of the Constitution of Jammu & Kashmir, Faculty of Law University of London 1963.

Bhushan, Vidya : The Framing of Jammu and Kashmir's Constitution University of Jammu, 1979.

Gupta, Renu : Left Movement in India – A case study of Jammu & Kashmir, University of Jammu, 1991.

Jan, Asifa : Protest Movements And Democratic Culture, University of Kashmir, 1994.

Kaul, Santosh : Evolution of the Constitutional Relationship Between Jammu And Kashmir State And Indian Union, University of Jammu, 1976.

Kumar, Raj : The Present Punjab Crisis : The Role of Rightists and Leftists Parties, University of Jammu, Jammu, 1996.

Kaul, Seema : Regional And Religious Dimensions of Jammu and Kashmir Politics Since 1947. University of Delhi, 1992.

Prasad, Romesh : The Constituent Assembly of India, University of Agra, 1960.

Om, Hari : Judicial Administration in Jammu & Kashmir, University of Jammu, 1976.

Rissam, Rajinder Singh : Political Parties : Split, Merger And Alliance – A Case Study of Jammu & Kashmir, University of Jammu, Jammu, 1994.

Sharma, Yog Raj : National Integration – Sheikh Community – A Case Study, University of Jammu, Jammu , 1988.

Singh, Narinder : Political Parties in the State of Jammu & Kashmir – A Case Study of Rightist Parties, University of Jammu, Jammu, 1990.

Singh, Balbir : The Working of Jammu & Kashmir Legislature, University of Jammu, 1973.

Saraf, Veena : Jammu & Kashmir State And Central Asia – Political Relation 1857 to 1947, University of Jammu, Jammu, 1992.

Sultan, Neelam : Patter of Legislative Leadership in Jammu & Kashmir, University of Jammu, 1977.

Singh, Amarjit : Economic And Social Implications of New Agricultural Strategy in Jammu & Kashmir with Special Reference to R.S. Pura, University of Jammu, 1976.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2025-Grant

Gandhi Memorial College Of Education Bantalab Jammu

Telegrams

The telegrams from the President Sri Amar Khashatriya Prantik Sabha Jammu Tawi, p.p. old files, 14-6-1952.

Typed Note

A typed Note in Pt. P.N. Dogra, old p.p. files.

A typed Note "The Administration" found in Shri B.P. Sharma's old record files, Jammu.

"Demand of Responsible Government in Kashmir" Shri B.P. Sharma's article. A typed draft found in his old record files, Jammu.

Micro Film

Dr Sharder Lawrance Loy, "Politics in Rajasthan, "A Ph.D. Thesis, University of California, Berkeley, 1965.

Books

Abraham. M : Francis=Dynamics of Leadership in villages India, International Pub. Allahabad, 1971.

Almod, Gabriel A, Powell, G.B. : Comparative Politics – A Developmental, Approach, Amerind Publishing Co. N.Y. 1966.

Anderson A. Alfred And Fredic B. Parkam. Society Organisation And Operation Princetion, New Jersey, 1964.

Almond, Gabriel & Verba, Sidney, The Civic Culture Princetion, New Jersey, 1963.

Brincs, Russal, Indo-Pakistan Fonflicts, Pall Hall Press, London, 1968.

Bazaz, P.N., Struggle For Freedom in Kashmir, Panposh Publications, E-38. Hauz Khas, New Delhi-16, 1954.

Bakashi, S.R. : Sheikh Mohammad Abdullah, Jay Kay Book House, Jammu, 1995.

Bose, J.C., Cashmir And Its Princes, D.D. Misra, No. 65, Cross Street, Calcutta, 1889.

Baxter, Graig, Jana Sangh, University of Pennsylvania Press, Philadalphia, 1969.

Banerjee, A.C., Indian Constitutional Documents, Vol. 2, A. Mukherjee & Co. Private Ltd., Calcutta, 1961.

Birdwood, Lord, Two Nations and Kashmir, Robert Hala Ltd. 63, Old Brompton Road, London, S.W. 7, 1956.

Bambzai, P.N., History of Kashmir, Metropolitan Book Company Pvt. Ltd., 1962.

Buger, S. Angela, Opposition in a Dominant Party System, University of California, Berkeley, 1969.

Basu, D.D., Commentary on the Constitution of India, Vol. 5, S.C. Sarkaar & Sons (Pvt.) Ltd., Calcutta, 4th Edition, 1964.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2023-Grant

Gandhi Memorial College Of Education Bantalab Jammu

Baxter, Graig, District Voting trends in India (A reference Tool), Southern Asian Institute, School of International Affairs, Columbia University, New York, 1969.

Basu, D.D., Shorter Constitution of India, S.C. Sarkar & Sons (Pvt.) Ltd., 1-C College Square, Calcutta-12, 1967.

Butt, Sanaullah, Kashmir in Flames, Ali Mohd. & Sons. Srinagar.

Chagla, M.C., Kashmir 1947-65, Publication Division Minstry of information & Broadcasting, Govt. of India, 1965.

The Constitution of Asia Countries, Prepared by the Asian African Legal Consultine Committee. N.M. Tripathi Pvt. Ltd., Bombay, 1968.

Clarke, Hatold, D ; Due, Lawrence Le ; Johnson, Jane and Pammet. John : Political Choice in Canada, Macg saw Hilli Ryerson. 1979.

Drew, Frederic, Jammu and Kashmir Territories. Edward Stanford. London. 1877,

Douir, Sir James, The Punjab, North-West Frontier Provinces and Kashmir, Cambridge University, 1966.

Digby, Sir Willam, Condemned Unheard, Indian Political Agency, 21, Graven Street, Charing Cross, London, 1890.

Dass, Durga, Sardar Patel's Correspondence 1945-50. Vol. 1, Nava Jivan Publishing House. Ahmedabad-14, 1971.

Dunning William, Archibard, History of Political Theories, from Rousseau to Spencer, Central Book Dept., Allahabad, 1967.

Dhal, Robert : Political Opposition in Western Democracies. New Heven Yale University Press, 1966.

Durverger, Maunca, Political Parties their Organisation And Activities in the Modern States, London, 1954.

Edwards and Marivales, Life of Henry Lawrence, Smith Elder & Co., London, 1972.

Edwards and Marivales, Encyclopedia of Social Science, Vol. 3-4 Macmillan, New York, 1963.

Gazetteer of Kashmir & Ladakh, Vivek Publishing House, Delhi, 1974.

Ganju, Dr. M., This is Kashmir, S. Chand & Co., Delhi, 1948.

Gupta, Jyoti Bhushan Dass, Jammu & Kashmir, Martinus Nijhoff the Hague, 1968.

Gupta, S.P. ; Bhambri, C.P., Elections And Political Consciousness in India, Mennakashi Delhi 1967.

Gandevia, Y.D., The Testament of Sheikh Abdullah, Palit & Palit Publishers, Dehra Dun, 1974.

Gajendragadkar, P.B., The Constitution of India, Oxford University Press, 1969.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2025-Grant

Gandhi Memorial College Educational Trust, Jammu

Holdrorn, Loisw, Herzy, John J., and Carter, Gwendolen H., Document of Major Foreign Powers, Nor Court, Brace & World Inc, New York, 1968.

Imperial Gazetteer of India, The Indian Empire, Vol. I, Oxford, 1907.

Jennings, Sir Ivor, The Law and the Constitution, University of London Press Ltd.

Jones, W.H. Morris, Parliament in India, Longman Green & Co. London. 1957.

Jain, J.P. Soviet Policy towards Pakistan and Bangladesh, Radiant Publishers, New Delhi, 1974.

Kaul, K.N. & Dhar, K.L., Kashmir Speaks, Luzae & Co. Rusel Street, London 1950.

Kaul, Pt. Anand, Geography of Jammu & Kashmir State, Published by the author, 1925.

Kapur, M.L., Kashmir Sold and Snatched, Published by the Author, 1968.

Kak, B.L., Changing Shadows in Ladakh Light and Life, Publisher New Delhi 1978.

Kaul, Pt. Salig Ram, The Biography of Maharaja Gulab Singh, founder of the J & K State, Saligram Press, Srinagar, S-1980 (1st step 1923).

Kaul G.L., Kashmir Through the Ages, Chronicle Srinagar, 1954.

Kaul, G.L., Kashmir Then and Now, Chronicle Publishing House, Srinagar, 1977.

Kaul, Shindhar and Kaul, H.N., Ladakh Through Ages, Indus Publishing Company New Delhi, 1995.

Korbel, Josef, Danger in Kashmir, Princeton University Press, 1966.

Kapur, Harish, The Soviet Union and the Emerging Nations, Michael Joseph Ltd., Geneva, 1972.

Kishore, Mohammad Ali, Jana Sangh and India's Foreign Policy, Associated Publishing House, New Delhi, 1969.

Kenneth, Krough, The Political Though Since World War-II, The Free Press N.Y. 1954.

Kothari, Rajni, Context of Electoral Changes in India Academic Book, New Delhi 1969.

Lawrance, Walter R., The Valley of Kashmir, Kasar Publications Srinagar, 1967.

Lipset, S.M., Political Man, Mercury Books, London, 1960.

Mahajan, Mehr Chand, Looking Back, Asian Publication, 1963.

Marsha, R. Singer, A Study of Political Leadership in Cylone, The M.T.T. Press, Massachusetts institute of Technology, Cambridge Massachusetts, 1970.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2025-Grant

Gandhi Memorial College Of Education Bantalab Jammu

Mehta, Shiv Rattan, Emerging Pattern of Ruler Leadership, Wiley Eastern Private Ltd., 1972.

Madhok, Balraj, A Story of Bungling in Kashmir, Young Asia Publications, New Delhi, year not mentioned.

Maheshwari, Shama, Electoral Politics in the National Metropolis, Ritu Publishers New Delhi, 1992.

Maheshwari, Shriram, The General Elections in India, Allahabad, 1963.

Narian, Iqbal, State Politics in India, Meenakshi Publications, Mmeerut, 1967.

Najami, Tanufiq. The Communist Party and India's Foreign Policy, Associated Publishing House, New Delhi, 1971.

O'Cornor, V.G. Scott, The Charm of Kashmir, Longmans Green, London, 1920.

Puri, Balraj, Jammu a Clue to Kashmir Tangle, Published by the author, A-4, Model Town, Delhi-9, 1966.

Puri, Balraj, Jammu and Kashmir – Triumph And Tragedy of Indian Federation, Sterling New Delhi.

Puri, Balraj : Abdullah Era-Evoluation of Kashmir Identity (Ed.), 1982.

Puri, Balraj : Some Vital Problems of Jammu & Kashmir, Published by the author.

Palmar, Norman D : Elections And Political Development, Vikas New Delhi, 1976.

Panikar, K.M., Gulab Singh, Martin Hopkinson, Soho Square, London, 1930.

Phillips, C.H., Wain Wright, Mary Doreen, The Partition of India : Policies & Perspectives 1935-1947, George Allen & Unwin Ltd., 1970.

Quraishi, Z.M., Elections And State Politics in India, Sandeep, New Delhi 1979.

Rahul, Ram, The Himalayan Border Land, Kasar Publication, Srinagar, 1967.

Robert G., Dixon and Elmer Plischka, American Government Basic Documents and Material, D. Van Nostrand Company, Inc Princeton, New Jersey, Feb. 1952.

Rao, B. Shiva, The Framing of India's Constitution, The Indian Institute of Pub. Administration, New Delhi, 1966.

Rao, H.S. Gururaja, Legal Aspects of the Kashmir Problem, Asia Publishing House, New Delhi, 1967.

Roder, Anderson ; Christol, Green, Introduction of Political Science, MC-Grow-Hill Kogak Usha, London 1975.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2025-Grant

Gandhi Memorial College Of Education Bantalab Jammu

Raddy, G. Rama, Sharma B.A.V. : State Govt. And Politics, Ander Pradesh, S.K, Giri, New Delhi, 1979.

Singh, Gaya Prashad, Pictorial Kashmir, Behari Press, Patna, 1914.

Singh, Lt. Col. Bhagwan, Political Conspiracies of Kashmir, Light & Life Publishers, Lucknow, 1973.

Setaivad, M.C., My Life, Low & Other Things, M.M. Tripathi, Publishing Book, Bombay, 1970.

Shankar, V., My Reminiscences of Sardar Patel, The Macmillan Company of India Ltd., 1974.

Strong, C.F., Modern Political Constitutions, Sidgwick & Jackson Limited, London, 1963.

Srinivas, Smriti, Ladakh – The Last Honzon Problem in Strategic Spot, Frontline Oct. 28, 1991.

Subash, C. Kashyap, Elections and Electoral Reforms in India, ICPS, New Delhi, 1971.

Tewan, Umakant, The Making of Indian Constitution, Central Book Dept., Allahabad, 1969.

Teng, Krishen Mohan & Koul, Kashmiri Special Status, Oriental Publishers, Delhi, 1975.

Wahhke, G. John, Eluleu Heinz, Buchanan William & Furguson C. Lercy. The Legislative System, John Wiley & Sons, Inc, New York, 1962.

Winer, Myron, State Politics in India, Chicago, 1968.

Wheare, K.C., Modern Constitutions, Oxford University Press, London, 1967.

Walter, Languour, A Dictionary of Politics, Oxford University Press, London, 1967.

Walter, Languour, A Dictionary of Politics, Oxford University Press London 1964.

Pamphlets and Journals

Ahmed, Sheikh Nazir, Toppling Game in Jammu & Kashmir, J & K Nation Conference year not mentioned.

Basu, D.D., Union Jurisdiction over Jammu & Kashmir, S.C. Sarkar & Sons Ltd. I.C. College Square, Calcutta-12, year not mentioned.

Batrohi, Dev, Constitutional and Political Aspect, Directorate of Information J & K Govt. Srinagar Aug. 1984.

Dhar, P.N., The Kashmir Problem – Political and Economic Background, Indian Council of World Affairs, Bakshi House, Cannaught Place, New Delhi, 1951.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2025-Grant

Gandhi Memorial College Of Education Bantalab Jammu

Goni, Abdul Ghani, Doba-District, Issued by the author, 24th July, 1953.

Goni, Abdul Ghani, Sheikh Mohd. Abdullah – An Assessment, New Kashmir Press, year unknown, Srinagar.

Gupta, N.L., R.S.S. and Kashmir, Samparadayaikta Virodhy Committtee, 9-Gurudwara Rakab Ganj Road, New Delhi, year unknown.

Hamdani, Ghulam Mohi-ud-Din, Our Constituent Assembly, Mujahid Manzil, Srinagar, Sept. 1951.

Jha, B.K., Marxism of the New Left, Indian Journal of Political Science XXXXIX Vol. 4, 1978.

Kaul, Pt. Sham Lal, To Hell with Slave Elections – Kashmir Demands Freedom, Lahore, year not mentioned.

Mir, Ghulam Mohd. & Koul, Mohar Nath, Conspiracy in Kashmir. A Brief review of Social Political Study Group, Amerikadal Srinagar, year not mentioned.

Naik, Ali Mohd., Kashmir Problem – True Side of Picture, Rejoinder of the Plebiscite Front President to Nehru's observations on Kashmir made during the Srinagar speech on July 1971.

Puri, Balraj, Communism in Kashmir, Institute of Political and Social Studies, 211 Park Street, Calcutta, 1961.

Sathu, Jagan Nath, Behind the Iron Curtain in Kashmir, Democratic Union, 30 Faiz Bazar, Delhi, January 1952.

T.L. Koo, M.K., Resettlement Bill, A Solam Pledge Redeemed Ministry of Law & Industries J & K State Srinagar May 18, 1982.

Zutshi, J.N., Kashmir's Journey to Freedom, The Kashmir Bureau of Information, 5 Prithvi Raj Road, New Delhi.

Zutshi, J.N., A Portrait of Population, Jammu & Kashmir Census of India, 1971.

Administrative Units Reshaped : Ministry of Information & Broadcasting J & K Govt., year not mentioned.

Address to Joint Session of the Jammu & Kashmir Legislature Governor L.K. Jha : Government of Jammu & Kashmir, 5th January, 1977.

A Plea to Understand Praja Parishad : All J & K Praja Parishad, Jammu, year not mentioned.

A brief Review of Progress in Jammu & Kashmir : Information Dept. J & K Govt., 31st Oct., 1952.

A Case for An Open Enquiry : Publicity Dept., The All J & K Praja Parishad, Jammu, year not mentioned.

A Study of the Communist Movement in Kashmir : Jyoti Prakashan, Ghhaziabad, year not mentioned.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2023-Grant

Gandhi Memorial College Of Education Bantalab Jammu

Crisis in Kashmir : Lala Rookh Publications, Srinagar, year not mentioned.

Elections in Kashmir : The Publication Division, Ministry of Information & Broadcasting, govt. of India, Oct. 1957.

Elections To J & K Constituent Assembly : Ministry of Information & Broadcasting, Jammu & Kashmir Govt., year not mentioned.

India and Kashmir Constitutional Aspect : Ministry of Information & Broadcasting, J & K Govt., year not mentioned.

Jammu & Kashmir 1947-50 : Information Officer, J & K Govt., year not mentioned.

Jammu & Kashmir August 53-August 54 : Director of Information & Broadcasting, J & K Govt., year not mentioned.

Jammu & Kashmir Constituent Assembly Who's Who, Srinagar, 1956.

Jammu & Kashmir Information : Bureau of Information, H.H. Govt., of J & K, April-August 1946.

Jammu Rejects A Separate Constitution : All J & K Praja Parishad, Jammu, year not mentioned.

Kashmir – At a Glance : Department of Information, J & K Govt., 1961.

Kashmir Today : Vol. 3, May-June 1959, No. 5, J & K State Information Deptt.

Keys to Kashmir : A Lalarukh Publications, Srinagar, 1957.

Kashmir : General Secretary, All India States Peoples Conference, Bombay, January 1939.

Kashmir in India : The author, publisher and year unknown but printed at the Claxton Press, New Delhi.

Kashmir is India : New Kashmir Publications, Srinagar F.S.O. IV-1965.

Kashmir : M.C. Chagla's Speech in the Security Council, Publication Division, Ministry of Information & Broadcasting, Delhi-6. 1964.

Manifesto of All India Bharatiya Jana Sangh Oct. 1951 : Bhartiya Mundralaya, Darya Ganj, Delhi.

New Kashmir : Published by K.N. Bamzai, The Director, Kashmir Bureau of Information 5, Prithvi Raj Road, New Delhi, year not mentioned.

Nehru-Abdullah Pact-A unholy Ayreement E' Fraud : Publicity Secretary All Jammu E' KashmirPraja Parishad, Year not mentioned.

Post-Elections Politics of Jammu & Kashmir : Found in Praja Parishad old files, Jana Sangh Head Office, Jammu, year not mentioned.

Programme : The All J & K Praja Parishad, Jammu, year not mentioned.

Praja Parishad Stand Explained : The All J & K Praja Parishad Jammu year not mentioned.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2023 Grant

Gandhi Memorial College Of Education Bantalab Jammu

Speech of Shri N.C. Chatterjee, M.P. : In the House of the People on the Presidential address on the 20th May, 1952. All India Hindu Maha Sabha Reading Room, New Delhi, year not mentioned.

Twenty-Point Programme Implemented in J & K : Deptt. of Information, J & K, Srinagar, 1970.

The Jammu Disturbances-1952 : Ministry of Information & Broadcasting, J & K Govt., year not mentioned.

The Flag Issue : Kashmir Bureau of Information, New Delhi, year unknown.

Unwanted Champions : Address to the U.N. General Assembly by Syed Mir Qasim, Publication Division, Ministry of Information & Broadcasting, Govt. of India, 1965.

Why Bhartiya Jana Snagh : Bharatiya Mudranalaya, Darya Ganj, Delhi, 1951.

25 Years of Progress : J &K Govt., 1972.

Journal of Constitutional and Parliamentary Studies, April 1972.

Journal of Constitutional and Parliamentary Studies, June 1972.

Newspapers, Weeklies and Fortnightly

Amrit Bazar Patrika, Calcutta, 31st Oct. 1950.

Amrit Bazar Patrika, Calcutta, March 28, 1952.

Bombay Chronical, April 18, 1952.

Deccan Herald, Bangalore, July 15, 1951.

Deccan Herald, Bangalore, April 16, 1952.

The National Herald 12th January, 1972.

Delhi Express, Eelhi, July 2, 1952.

Delhi Express, Eelhi, July 27, 1952.

Dawn, Karachi, Nov. 1, 1950.

Dawn, Karachi, Nov. 4, 1950.

Dawn, Karachi, January 22, 1951.

Economic Times, Delhi, August 30, 1976.

Free Press Journal, Delhi, April 14, 1952.

Free Press Journal, Delhi May 28, 1952.

Hindustan Standard, Delhi, Dec. 28, 1950.

Hindustan Standard, Delhi, March 3, 1952.

Hindustan Standard, Delhi, June, 3, 1957.

Indian News Chronicle, Delhi, Sept. 10, 1951.

Indian Express, Delhi, April 15, 1952

Indian Express, Delhi, July 14, 1970.

Indian Express, Delhi, July 15, 1970.

CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2025-Grant

Gandhi Memorial College Of Education Bantalab Jammu
Indian Express, Delhi, July 19, 1970.
Indian Express, Delhi, Feb. 25, 1975.
Indian Express, Delhi, July 22, 1977.
Indian Express, Delhi, Nov. 23, 1977.
Khidmat, Srinagar, April 3, 1946.
National Herald, Lucknow, Sept. 3, 1951.
The Asian Tribute, April 16, 1952.
The Hindu, Madras, Feb. 13, 1939.
The Hindu, Madras, May 29, 1949.
The Hindu, Madras, June 26, 1949.
The Hindu, Madras, June 11, 1951.
The Hindu, Madras, Feb. 12, 1952.
The Hindu, Madras, April 8, 1952.
The Hindu, Madras, April 12, 1952.
The Hindustan Times, March 13, 1946.
The Hindustan Times, March 30, 1946.
The Hindustan Times, New Delhi, Oct. 14, 1947.
The Hindustan Times, New Delhi, Nov. 24, 1950.
The Hindustan Times, New Delhi, Dec. 18, 1950.
The Hindustan Times, Calcutta, Dec. 28, 1950.
The Hindustan Times, New Delhi, May 3, 1951.
The Hindustan Times, New Delhi, May 7, 1951.
The Hindustan Times, New Delhi, May 30, 1951.
The Hindustan Times, New Delhi, July 30, 1951.
The Hindustan Times, New Delhi, August 7, 1951.
The Hindustan Times, New Delhi, August 19, 1951.
The Hindustan Times, New Delhi, March 3, 1952.
The Hindustan Times, New Delhi, April 9, 1952.
The Hindustan Times, New Delhi, April 10, 1952.
The Hindustan Times, New Delhi, April 26, 1952.
The Hindustan Times, July 4, 1952.
The Hindustan Times, New Delhi, Feb. 18, 1953.
The Hindustan Times, New Delhi, June 20, 1977.
The Hindustan Times, New Delhi, Nov. 16, 25, 28, 1992.
The Pakistan Times, Lahore, New Delhi, May 31, 1949.
The Tribune, Chandigarh, New Delhi, March 30, 1952.
The Tribune, Chandigarh, New Delhi, Feb. 3, 1952.
CC-0 Agamnigam Digital Preservation Foundation,Chandigarh.Funding by IKS-MoE-2025-Grant

Gandhi Memorial College Of Education Bantalab Jammu.

The Tribune, Chandigarh, New Delhi, July 11, 1952.
The Statesman, New Delhi, Nov. 6, 1951.
The Statesman, New Delhi, Nov. 8, 1951.
The Statesman, New Delhi, Nov. 14, 1951.
The Statesman, New Delhi, March 3, 1952.
The Statesman, New Delhi, April 12, 1952.
The Statesman, New Delhi, June 22, 1952.
The Times of India, New Delhi, May 1, 1951.
The Times of India, New Delhi, June 23, 1952.
The Times of India, New Delhi, July 3, 1952.
The Times of India, New Delhi, Sept. 14, 15, 1982, April 21, 27, 1983, July 19, Dec. 11, 18, 31, 1984, May 25, 1995.
The Week, New Delhi, August 11, 1991 & Dec. 22, 1991.
Cooperative Bulletin, Jammu August 1957.
Indian Quarterly, Vol. VII, No. 2, April-June 1951.
Kashmir Affairs, New Delhi, Nov. 5, 1951.
Organiser, Delhi, Nov. 5, 1951.
Organiser, Delhi, June 2, 1952.
Organiser, Delhi, Oct. 27, 1952.
Organiser, Delhi, Sept. 22, 1952.
Organiser, Delhi, Oct. 13, 1952.
Organiser, Delhi, Feb. 15, 1954.
Organiser, Delhi, May 3, 1954.
Organiser, Delhi, May 14, 1954.
Organiser, Delhi, August 15, 1954.
Ouomi Awaz, Jammu, July 1974.
Jammu & Kashmir Chronicle, Jammu, Feb. 1976.
Ranbir (Weekly) Urdu, Jammu, July 1951.
The Sach, Jammu, 1950.
Vital Speeches and Document of the Day, Vol. No. XXII, Vol. IV, Nos. XXII, XXIII & XXIV Nov. 15, Dec. 1 & Dec. 5 New Delhi, 1963.
Vigil (Weekly), Vol. IV, No. 52, Delhi, Feb, 13, 1953.
Kashmir Times, Jammu, Nov. 14, 15, 16, 18, 19, 22, 23, 24, 25, 26, Dec. 3 to 11 & Dec. 15 to 31, 1984.
Daily Excelsior, Jammu, Dec. 1 to Dec 31, 1984.

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Dr. Vidya Bhushan (born February 14, 1937) graduated from Government Gandhi Memorial (Arts) College, Jammu in 1958. He also obtained the degree of Bachelor of Education (B.Ed.) from Jammu and Kashmir University in 1959. He, then joined Aligarh Muslim University, Aligarh from where he obtained his M.A. degree in Political Science and L.L.B. in 1962 and 1963 respectively.

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